D1531

Due Order of

Law and Justice

PLEADED

£40

AGAINST

Irregular & Arbitrary

PROCEEDINGS:

In the Case and late Imprisonment of *George Whitehead* and *Thomas Burr* in the City and County Goal of *Norwich*, from the 21st day of the 1st Moneth, called *March*, 1679. to the 12th day of the 5th Moneth, called *July*, 1680.

Being an Impartial Account of the most Material Passages (and Letters to the Magistrates) relating to the said Proceedings with the Prisoners abovesaid.

Wherein the People called *Quakers* are Vindicated and Cleared from *POPERY*.

Published for Information and Caution, on the behalf of True Protestants *and* English-mens *Birth-rights.*

Jer. 5. 26. *For among my People are found Wicked men, they lay wait as he that setteth Snares; they set a Trap, they* catch *men.*

London, Printed by *Andrew Sowle*, and sold at his Shop in *Devonshire* New-buildings, without *Bishops-Gate*, 1680.

TO THE READER

Serious Reader;

ALthough the Publication of this noted Case of our Friends *George Whitehead* and *Thomas Burr* has been for some time delayed, through other occasions of Truth's concern intervening, yet 'tis not meet that such matters should be buried in Oblivion, or be laid by in Obscurity; wherefore at the desire of many Judicious and Well-meaning Persons (with respect to the good of our Nation and *English* Birth-rights) is this following Treatise exposed to publick view, not in Revenge to the Persecutor of our Friends, but for Instruction and Warning for time to come, especially of men in Commission for the Peace. The late Irregular and Unjust Proceedings against these our Friends concern'd, and how well the Lord enabled them to acquit themselves, both as *English-men* and *Christians* in defence of their Christian cause, many have understood; and their Christian and Gentle Behaviour towards the Magistrates, their Language in the following account

account beſpeaks, wherein they do as well confeſs the civility of thoſe Magiſtrates of *Norwich*, as impartially detect the Irregularities and Injuſtice of their Perſecutor. I am not ignorant what the Judgment of able Counſel was in their caſe, I being one that made Inquiry therein, as to matter of Law, and 'twas concluded that it was *Falſe Impriſonment*, being *Againſt Law*; and knowing our Friends Innocence and good Repute among their Neighbours, *&c.* as real *Proteſtant Chriſtians*, this following Account is the more freely recommended to thy moſt Serious and Imparial peruſal and conſideration.

E. Hookes.

A Short

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WE, the ſaid *George Whitehead* and *Thomas Burr*, providentially and unexpectedly meeting together, about 10 or 12 Miles from the City of *Norwich*, the 19th day of the 1ſt Moneth, and Year above-ſaid, we were both determined (from a Neceſſity upon our Spirits, in true Friendſhip and Chriſtian-Charity) to viſit our Friends at their publick Meeting in the ſaid City, on the firſt day of the Week next following, which was the 21ſt day of the ſame Moneth, 1680. which we could not well omit, as with clearneſs in the ſight of God, or with inward Satisfaction to our Conſciences, although we underſtood beforehand what Evil Agents, Perſecuting Informers and Diſturbers were apt to be buſie againſt our Friends Meeting in that City; we freely ſubmitted to the Will of God, and with our Eye to him reſigned to divine Providence, as to what might be ſuffered to come to paſs for the holy Truth's ſake and ſervice. The account of that day's Tranſaction with us follows.

Upon the 21ſt day of the 1ſt Moneth, 1680. being the firſt day of the Week, the Meeting of the People called *Quakers*, of the ſaid City, continued peaceable in the Forenoon, and likewiſe in the Afternoon, for about half of the uſual Time of the Meeting, in which time *Thomas Burr* had an opportunity peaceably to declare the

Truth, and after him *George Whitehead* for a little ſpace; in the enterim came in a rude Company, chiefly Informers, Tumultuouſly and Violently crowding into the Meeting, to pull G. W. down: He divers times required them to ſhew ſome Legal Authority: They uſed ſeveral abuſive words, and endeavoured to inſinuate to the People, *That he might be a Jeſuit*; and demanded our Names and Places of Abode. G. W. detected their Abuſe and falſe defaming Inſinuation to the People, and diſcovered his Name and Habitation, to prevent Suſpition in the People. Again, he demanded by what Authority they came thus to diſturb our Meeting, and call us in Queſtion? bidding them produce their Warrant; but they refuſed to give Account, or ſhew any Warrant. So after ſome Tumultuous Buſtle, and Hiddious Noiſe that they made in the Meeting (being prevented by the great Crowd, from coming at us to hale us away) the chief of them with-drew; and in a little time after, one of the Sheriffs † of the City came in, calling for us, and came to us (the People making way for him) he required us to go along with him, taking G. W. faſt hold by the hand, and led him along out of the Meeting, near about half way to the Priſon, with other Perſons with him, that were the Diſturbers and Informers, to guard us along to the Priſon; the Sheriff turned us in at the Goal Door, and left us there, where we were detained about two Hours, and then were ſent for, and by the Goaler were had before Juſtice *Bacon*, the then Recorder of the City, who after ſome time called us into a Room (many other Perſons coming in) where the Prieſt * of the Pariſh was alſo with him, who at firſt ſeemed offended, and began to Queſtion with us about our Hats, and afterward about *Sacraments*, &c. often interrupting and interpoſing between us and the Juſtice, as one ſeeking occaſion againſt us, but was plainly anſwered and reprehended by us, the Priſoners, for his Incivility, though the Recorder ſhewed no diſlike of his Carriage; who having his Law-Books and Bible before him, firſt begun with us about our Names, Habitations and Trades; and enquired, *If we were in Orders, or had Orders from* Rome. To all which we gave him a plain Account, denying any ſuch Orders; and ſolemnly (in the Preſence of God) declared our Abhorrance of *Popery*. Then he Queſtioned us about our Preaching that day in the Meeting.

† i.e. *Tho. Seamans.*

* i.e. *Prieſt Whitefoot.*

Meeting. To which we alſo gave him a Plain and Chriſtian Anſwer. After ſome Diſcourſe, he read part of the *Act againſt Conventicles*, 22 *Car.* 2. *Cap.* 1. and inſiſted upon it, That we were Offenders of it; and threatned, that he would Fine us 20*l.* a man; and then demanded of us to Depoſit the Money: But we told him, we had not Freedom to do that, although we have Eſtates Reſponſible (that lie open to the Law) where our Habitations are: This we told him, and did ſome-what inſiſt upon it, that he might not Fine others on our account: And partly to prevent him from impoſing the *Oath* of *Allegiance* upon us, to circumvent and entrap us, he being about it, queſtioned us, *Whether we would take it or not?* We anſwered in General, That we could take no Oath for Conſcience ſake; and therefore deſired him to take that as a Caution, not to go about to enſnare us there-with, ſince he had begun with us upon another Statute, touching our Meeting. He ſaid, *If we would neither pay the Fines, nor take the Oath, he would commit us to Goal:* And finding none ready to depoſit the Fines, the Informer whiſpered him in the Ear (as he ſuffered him ſeveral times to do, though requeſted by the Priſoners to the contrary,) Then he enquired, *When we came into the City? and where we lodged? and where we ſet up our Horſes?* To all which we gave him account; whereupon one or more of the Informers (after ſome whiſpering with the Recorder) went from him to the Inn where our Horſes ſtood, but in the very enterim ſome Friends took them away unknown to us the Priſoners, (though ſome have wrongfully upbraided us in that matter, as craftily deſigning and knowing of it.) So he told us, *He would commit us to Priſon, till next Seſſions, and there the Oath of Allegiance ſhould be again tendred us; and we ſhould be Præmunired if we refuſed to take it: But if we would pay our Fines, he ſhould not ſend us to Priſon:* Which we not doing (having told him where our Habitations and Eſtates were, which were Reſponſible) he concluded with theſe Words, viz. *De non apparentibus et non exiſtentibus eadem eſt ratio*; Of things not appearing, and things not in beeing, there is the ſame Reaſon, *i. e.* Our Eſtates that are at *London* and *Ware* appear not at *Norwich*; therefore they are not *in Rerum Natura*, or not in beeing. —— Strange kind of Logick, or Reaſon in this Caſe! After a little ſpace he told us, *That if we would give in Security to appear at next Quarter-Seſſions, he would not ſend us to*

Goal: Which we not having Freedom to give, we requeſted of him, That he would but let us lodge out of Priſon that Night, that convenient Lodging might be made ready in Priſon for us (it being then ſome-what late in the Evening) we promiſing (God willing) to appear at Priſon next Morning; and ſome others preſent, proffering to Engage for our forth-coming then: No, by no means would he grant us that ſmall Civility, unleſs we would Engage in 40 l. Bond or Security for our appearance next Morning at Priſon; which Kindneſs of his, not being worth farther Diſcourſe, we accepted not of it. So he ſent us that Night to the Goal, where we remain ſatisfied in the Will of the Lord, to wait upon him in Patience and Submiſſion to his good Pleaſure.

Many material things paſſed between us, which cannot well be Collected in due Order, others are omitted for brevitys ſake.

Norwich-Goal, the 22d day of the 1ſt Moneth, 1680.

G. W. & *T. B.*
Priſoners.

POSTSCRIPT.

Note, † 35 *Eliz.* cap. 1.

THat among other Reflections, the Recorder (rendring the ſaid Priſoners *Seducers, Seditious, &c.*) he told them of a Statute yet in Force, that was made in Q. *Elizabeth*'s days † *To Hang ſuch Perſons as they were.* Being asked by the Priſoners, If he could proſecute them upon that Law, or execute it upon them? He anſwered, *Yes, if the King ſhould give Order to have it put in Execution, he would do it; he would proſecute them, and have them Hang'd, if they would not abjure the Realm, &c.* or to that effect.

After the Subſtance of the Account given before was writ, theſe following Teſtimonies were by ſome Friends delivered to the Priſoners, wherein are the Names of ſome of the Tumultuous Diſturbers and Informers before-mentioned, ſome whereof refuſed to tell their own Names, when asked in the ſaid Meeting.

This

This was obſerved in the late Diſturbance of our Meeting in *Norwich*, the 21ſt day of the 1ſt Moneth, 1680. That *Paul Hartly*, one of the chief of them, was ſeen to ſnatch off *John Sharpings* Hat and threw it a great way over the Peoples Heads in his Wrath.

Certified by

Ambroſe Anſell & John Sharping.

THe 21ſt day of the 1ſt Moneth, 1680. one *Chriſtopher Nobs*, Clerk of *Gregories* Pariſh, came into the Meeting at *Norwich*, Puſhing on each ſide with his Elboes, and ſmote *Roſe Gogny* ſuch a hard blow on her Breaſt, that her Breaſt was ſore ſeveral dayes. Alſo *Charles Alden*, the Vintner, at the Sign of the Chairing-Croſs, came calling out, *Here's Sons of Whores! Here's five Hundred Sons and Daughters of Whores! The Church Doors ſtand open, but they will be Hang'd before they will come there.* And whilſt a Friend was ſpeaking, the ſaid *Alden* ſaid, *Pull down that Puppy-dogg; why ſuffer you him to ſtand there Prating?*

Robert Robinſon, Roſe Gogny.

It plainly then appeared, that the ſaid *C. Alden*, and the reſt of thoſe Rude and Tumultuous Perſons behaved themſelves more like *Atheiſts* and *Bruit Beaſts*, than Perſons of any Serioufneſs, Regard to Religion or Chriſtianity: Nay, let Humanity and Common Civility condemn their Deportment. What Ornament ſuch Sons of the Church can be to her, let their Prieſts, and all ſerious Perſons judge (though the ſaid *Alden* be accounted a great Singer at the Cathedral, *i.e.* one of their Singing-men) how Immoral and Bruitiſh was his Behaviour? How buſie was he alſo with the Recorder againſt the Priſoners, informing, muttering and whiſpering againſt them? greatly inconſiſtent with ſo much as the pretence of common Juſtice to ſuffer, much more to countenance ſuch work. Surely the Righteous Judge of all will plead with all ſuch Malicious Agents, and ſuch Injuſtice will not go Unrebuked.

Here

Here follows a Copy of the Priſoners Letter, delivered to the Mayor before the Quarter-Seſſions, containing a twofold Requeſt, &c.

To the Mayor, Juſtices and Aldermen of the City of *Norwich*.

WE whoſe Names are hereunto ſubſcribed, being Priſoners in your City Goal for our Conſcience towards God, do heartily wiſh Health, Happineſs, and Proſperity in the Way of Righteouſneſs, unto you all; and deſire of the All-ſeeing and Heart-ſearching God, that you may be preſerved from all Injuſtice, Prejudication and Arbitrary Proceedings, both in our Caſe (which we underſtand is to come before you) and in all other Caſes proper to your Cogniſance, as Civil Magiſtrates, wherein you are required to diſcharge a good Conſcience, both in the ſight of God and Men, as that which will greatly tend to your Peace with God, and your Reputation among good Men.

For as much as we have for ſome Weeks been detained Priſoners in your City Goal, and you have had no hand therein (ſaving that one Perſon, by whom we were committed) we are the more encouraged to make this brief Application to you, upon a twofold Requeſt, on this wiſe:

1*ſt*, We Requeſt your Moderation and Indifferency ſo far towards us, as that when we are called before you,

as

as a Court of Judicature in your Quarter-Seſſions (to hear and determin Matters, that come Judicially before you) you will pleaſe to hear us with Patience, and ſuffer us to open our Caſe, and to Plead and Argue, whether it be in point of Law, Conſcience, Reaſon or Fact, as our Caſe ſhall require. *Firſt*, Hear before you Determin, that we may not be over born, nor run down, nor any ſuch Precipitation uſed towards us in Court, to divert or prevent us from making our Defence, in referance to the Proſecution and Charge we ſuffer under.

2*dly*, We further Requeſt, That if upon a deliberate hearing, and due enquiry into thoſe Proceedings which we ſuffer under, we make it appear, that we are Illegally and Unduely proceeded withal, beſides and contrary to due proceſs and order of Law, that then you will not countenance, abet, nor confirm ſuch Proceedings againſt us, but ſtand clear thereof, and ſhew your Diſſent; for whoever be deputed Judge in your Court, as the King's Miniſter and Mouth of the Court, 'tis no otherwiſe ſo legally intended, than as he ſhall appear to be the Miniſter and Mouth of the Law and Juſtice, or *Lex Loquens*; and therefore cannot be reaſonable or ſafe, nor yet for your Reputation, or the Honour of your Court, to eſpouſe or confirm any Proſecution or Proceedure that's Injurious or contrary to due courſe of Law, and ſo tending to the * Grief and Diſhonour of the King, or Deſtruction of any of his peaceable People.

* 37 Ed. 3. c. 18.

Now we hope you'l not deny, but aſſent to theſe two fore-going Propoſitions, as Juſt and Reaſonable: And therefore, that we ſhall not need now to urge upon you, but only Re-mind you of theſe material Points of Law following.

1ſt,

1st, *It is the Kings Will (in point of Law) That all his Justices, Sheriffs, Mayors & other his Ministers, which under him have the Laws of the Land to guide, shall allow the great Charter of the Liberties of* England, *pleaded in all its Points.*

25 Ed. 1. c. 1. Cook Inst. 2 part fol. 527.

2dly, *That if any Judgment given, or any thing done contrary to the Points of the said Charter by the Justices, or any other the Kings Ministers, that hold Plea before them, against the Points of the Charters, it shall be undone, redressed and holden for nought.*

25 Ed. 1. c. 2. 5 Ed. 3. 9. 28 Ed. 3. 3. &c.

3dly, *The Court ought to be of Counsel with the Prisoner, to see that nothing be urged against him, contrary to Law and Right.* Cook Inst. 3 part fol. 29.

4thly, *That the Court ought to be so far from over-awing, or forcibly diverting the Prisoner from his Plea or Answer, That the Judge ought to Exhort the Prisoner to Answer without fear; and that Justice shall be duly administred unto him.* Cook Inst. 2 part fol. 316.

5thly, *That any learned man that is present, may inform the Court, for the Benefit of the Prisoner, or any thing that may make the Proceedings Erronious: As also (even in Cases highly Criminal) it is lawful for any man that is in the Court, to inform the Court, lest the Court should err, and the Prisoner be Unjustly proceeded with.* See Cook 3 part fol. 137.

Cook Inst. 3 part fol. 29.

Now Friends, these things are recommended, and left to your serious Considerations; we not designing hereby (as you may easily understand) to enter into the Merits or Justification of our Cause; but fairly to introduce the Right and Legal Cognisance thereof, in order to have Justice and Right done us, as ENGLISH MEN, and as we are your Well-wishers.

Norwich-Goal, the 17th of the 2d Moneth, 1680.

George Whitehead,
Thomas Burr.

We desire this may be Communicated.

An

An Account of the ſubſtance or principal Parts of the Proceedure at the *Quarter-Seſſions* at *Norwich*, holden for the City and County of the ſame, the 18th Day of the Moneth, called *April*, 1680. In the Caſe of *George Whitehead* and *Thomas Burr*, Priſoners for the Teſtimony of their Conſcience. *Francis Bacon*, the late Recorder of *Norwich*, being Proſecutor, Accuſer and Judge: But the Mayor and other Juſtices more indifferent and Judicious towards the Priſoners.

Collected and compared by ſeveral Hands, and digeſted into as much Order, as the Capacity the Sufferers, and the Circumſtances of Proceedings would admit.

THe Quarter-Seſſions for the City and County of *Norwich* begun the 19th Day of *April*, (ſo called) 1680. Adjourned until the 26th, and continued the 27th and 28th of the ſame. And again, Adjourned until the 17th of *May*, 1680. The aforeſaid Priſoners, *G. W.* and *T. B.* were called into Court the 27th of *April*, in the Year above-ſaid; nothing ſaid to them then by the Court: but they returned back immediately to Priſon, upon pretence of a miſtake about their being called forth.

At the Quarter Seſſions for the City and County of Norwich, *the 28th Day of* April, *(ſo called)* 1680.

1. THe Priſoners were brought to the Bar.
2. Their Hats ordered to be taken off.
3. Their Hats taken off.
4. *G. W.* ſtanding up to the Bar, begun thus, *viz.*

The Law of *England* requires two things of the Court, with reſpect to the Priſoners, *viz.*

1*ſt*, The patience of the Court; And } towards the Priſoners.
2*dly*, The Indifferency of the Court }

That their Caſe may be patiently heard and conſidered, (without Prejudication) before any Judgment paſs againſt them. This we expect from the Court.

We have been five Weeks in Priſon: 'Tis meet the Court ſhould know for what. Pray let our Mittimus be produced, and read in Court; that it may be underſtood what Charge we ſuffer under.

Our Suffering is two-fold: 1*ſt*, Above five Weeks confinement: 2*dly*, The Charge that's againſt us in the Mittimus. We requeſt that the Mittimus may be produced, and read in Court.

Recorder. *There's no need of your Mittimus to be read here; I'le give Account of the Cauſe: I'le inform the Court. Theſe Perſons had been two* || *Moneths from home, and had been up and down the Country in* Suffolk * *at a Burial*, &c. *And then they came hither, and here they gathered a company together of about two Hundred; and the Officers went from me to diſſipate them, but could not; whereupon I ſent the Sheriff, and he took them away, and put them in Priſon.* † —— *And then they were brought before me; and after Conviction made, I proffered them, That if they would pay their Fines — I would not commit them to Priſon; but when they would not, I tendred the Oath of Allegiance to them: And after they would*

|| An Untruth.
* Not true of *T. B.* 'twas only *G. W.*
† The Priſoners had not opportunity to ſpeak to all this Account.

wouldnot take it, I ſent them to Goal; as I think, I very well might.

G. W. We are *Engliſh*-men, and have right to Travel in any part of the Nation, *&c.*

T. B. I am a Perſon that have been concerned in Trading in Corn, as well in this County as in others; and by the Law of *England* a Man may Travel from place to place about his Concerns, and ought not to be moleſted, while he walks peaceably, *&c.*

R. *Had not you better been turning your Molt at home, then to cõme here to Preach? —— The Apoſtle* Paul *exhorts to follow the Vocation whereunto ye are called. —— The Scripture ſays, God added to the Church ſuch as ſhould be ſaved: But ye draw from the Church.*

Priſoners Note.

The Priſoner heard not theſe Words, but ſome others affirmed they did: However, had the Priſoner heard this Reflection before, upon a fair debate upon the Point, he might have anſwered the Recorder; That to be a Trades-man, or Lay-men (ſo called) is not inconſiſtant with being a Preacher of the Goſpel. When God added to the Church, it was through Lay-mens preaching, ſuch as Fiſher-men, Handicrafts-men, and ſuch like. 'Tis *Popery*, and the *Popiſh* Spirit, that would hinder Lay-men and labouring men (being indued with the holy Spirit) from being Preachers of the Goſpel; and not the Spirit of *Moſes*, who wiſht, that all the Lords People were Prophets; nor the Spirit of the holy Prophets, Chriſt or his Apoſtles, who did not go about to exclude Lay-men, or Mechanicks (ſo called) from preaching the Goſpel; for the beſt Preachers were generally ſuch in the Prophets and Primitive *Chriſtians* dayes.

R. *There is a Law —— And the Church of* England *will never be at quiet, till ſome of you be Hanged by that Law (or till ſuch fellows as you are Hanged.)*

G. W. The Court may ſee the frame of the Recorders Spirit towards us, and that he ſtands not as a Perſon *Indifferent*, but a party againſt us. Thou oughteſt not to inveigh againſt the *Priſoners*, nor threaten us. That ſtands not with the indifferency of the Court, nor yet thy determining or reſolving afore-hand againſt us, as thou haſt done. Judges ought not to declare their Opinions afore-hand againſt the *Priſoner*: *Huſſey*, the Chief Juſtice would not do it to the King, in the Caſe of *Humphry Stafford*, the *Arch Traytor*, but

begged of the King, He would not desire him to declare his Opinion afore-hand, that the Prisoner might come Judicially before him, and have Justice done him. And the King accepted his Request in the Case—— Interrupted.

See Cook, 3 *part Inst. fol.* 29.

R. *What King's Reign was that in?*

G. W. In King *Henry* the sevenths.

R. *I perceive you have read* (*or are read.*)

G. W. Seeing that none of the Court have as yet had any Hand against us, except the Recorder; we may charitably hope, that the Court will stand indifferent towards us, and let us have a fair hearing before any Determination. For as the Laws of our Nation require a due process, a due course of proceeding, before men be Sentenced or Condemned: So there ought to be a due hearing: As where a process or proceeding consists of several parts; each part ought to be enquired into, and *answered in due order*, without confounding one thing with another, or putting that first, which in course is last. Let us have a fair hearing and Tryal. Let's be tryed before we be Hanged. Let's not be Hanged first, and then Tryed: 'Twill be too late to try us after we are Hanged, *&c.*

R. *You were sent to Prison for refusing the Oath of Allegiance.*

G. W. That's a mistake: We were sent to Prison for being at a Meeting, charged to be against the Peace, which is the Premisses in our Mittimus, to which we are here to *Answer.* And therefore that all may know what is laid to our Charge, we desire our Mittimus may be read, that so, if there be any Persons, that will undertake to prove the matter in Charge, let us see them, and have liberty to answer the Premisses contained in the Mittimus.

R. *I will shew you, that when a Person is committed to Prison, he may have several Actions laid upon him; if new Charges be brought against him,* &c.

Prisoner, I grant that: But that's not our case; for we presume the Recorder had no new matter brought against us, after he committed us to Prison; and therefore could not lay any new charge upon us.

T. B. There could not be any new Charge against us, to render us suspitious of being *Jesuits* or *Papists*; but instead of that we have

have Certificates to take off any Jealouſies of that kind, that might be in any concerning us, which are ſubſcribed by Credible Perſons of our Neighbourhood.

G. W. The Premiſſes which we are to anſwer to, is matter of charge, contained in the Mittimus: Let it be read in Court we requeſt you.

R. *It ſhall not —— I'le give account. Theſe Perſons were taken at an unlawful Meeting. There's alſo a ſecond Mittimus, which ſignifies my requiring them to take the Oath of Obedience; and their Refuſal*, &c.

G. W. The ſecond is a Warrant to detain us without Bail or Mainprize, till Seſſions: 'Tis not the Mittimus, 'tis of another Date, *&c.*

R. *'Tis the Mittimus; and you are to Anſwer to it, whether you will take the Oath of Allegiance to the King. Theſe Perſons have refuſed to ſhew their Obedience to the King*, &c.

T. B. Pray forbear to accuſe us: We have ſhewed our Obedience by our peaceable Converſations, *&c.*

G. W. The ſecond Warrant is not the Mittimus. The Mittimus is that by which we were ſent to Priſon, bearing date the 21ſt day of *March*. The ſecond Warrant bears date the 23d day of *March*.

R. *The ſecond is the Mittimus; you are to Anſwer to it. We'l put the Oath to you.*

G. W. The ſecond is not the Mittimus; we were not ſent to Priſon by it: We were ſent to Priſon the 21ſt of *March*. The ſecond Warrant bears date the 23d of *March*: We were in Priſon (near two dayes) before the date of the laſt Warrant: There needed not be a Mittimus to ſend us to Goal, when we were ſent by one already ſo long before. I pray let our Mittimus be read in Court.

R. *Put the Oath to them, that's in the ſecond Mittimus*, &c.

G. W. I beg of this Court, for God's ſake and the King's ſake, to be heard fairly, without thus being run upon: For God's ſake, becauſe he is a God of Juſtice and Truth: And for the King's ſake, becauſe the King's will towards us (as Subjects) is what the Law and Juſtice wills. As his Will is the will of the Law; he wills that none of his Subjects be injured, or unduly proſecuted contrary to Law. I appeal to the Mayor as chief Magiſtrate of this City,

and

and the reſt of the Juſtices here preſent, Whether ye ought not to ſee us have that Right done us, as to have our Mittimus produced and read in Court, that you may underſtand the cauſe of our Commitment: We were not committed for refuſing the Oath. We intreat that the Court may hear our Mittimus, that we may not have other Premiſſes put upon us, than what's contained therein.

R. *It ſhall not be read; there's no need of that: I am preſent that committed you* ———

G. W. I appeal to the Mayor and the reſt of the Juſtices, who are more indifferent towards us for Juſtice in this caſe, *viz.* That we may have our Mittimus read, and anſwer to the Premiſſes contained in it; and not thus be run upon and diverted with that which is none of the Premiſſes, *&c.*

Mayor, *You have appealed to me: Truly we are Trades-men, and no Lawyers. We leave matters of Law to the Recorder; He knows the Law, and we muſt acquieſs in his Judgment.*

T. B. Thou underſtandeſt we ought to have our Mittimus read, and be heard: And thou art the chief Magiſtrate in this Court, *&c.*

G. W. You all have a Conſcience towards God, and an equal and juſt Law therein; And you are under a ſevere Obligation, to wit, your Oath, to ſee Juſtice and Right done us. We appeal to the Mayor and Juſtices here for Juſtice, in relation to our Mittimus, that it may not be thus evaded. We are at this Seſſions to anſwer to the Premiſſes, or matter of charge therein contained; you are concerned in Conſcience to do us right herein. The Honour of this Court is alſo concerned not to ſee us precipitated nos run down, upon other Premiſſes. The Mittimus was given under the Hand and Seal of your Recorder; his Reputation and Honour is alſo concern'd, *&c.*

R. *My Honour concern'd; Wherein?*

G. W. Thy Reputation and Honour is concerned, in that thou art bound to ſtand by our Mittimus; 'tis under thy Hand and Seal: Now thou goeſt about to evade it, by impoſing other Premiſſes upon us (or to the ſame effect.)

R. *They ſent their Mittimus to the Attorney General, and ſollicited him for advice, to know whether they were according to Law, or*

not

not —— And moved for a Habeas Corpus: *But it would not be granted.*

G.W. We neither ſent to the Attorney General, nor have we yet moved for a *Habeas Corpus.*

R. *The ſecond Mittimus or Warrant is about their refuſing the Oath of Allegiance: as for the firſt, I did not make it by Book.* ||

|| This the *Priſoners* did not hear, but others nearer.

G.W. 'Tis not a reaſonable thing to bring a Priſoner, and not withal to ſignifie the Crimes laid againſt him: It was contrary to the very Law of the *Romans.* ——Interrupted (being about to add) as *Feſtus* ſaid in the caſe of *Paul.* It ſeem'd to me a thing unreaſonable to ſend a Priſoner, and not withal to ſignifie the Crimes laid againſt him; which alwayes ought to be in Warrants of Commitment.

Acts 25. 16, 27.

R. *What tell you us of the Law of the* Romans, *we have Laws of our own to act by,* &c. (or to that effect.)

G.W. 'Tis according to the Law of Reaſon and Nations, that the Crimes and Offences ſhould be known, for which Priſoners are committed and detained in Priſon; elſe why ſhould they ſuffer?

R. *The Court muſt tender you the Oath.*

G.W. Wherefore then were we committed and detained in Priſon above theſe five Weeks? If we be Offenders, let's know our Offence, for which we were committed: If not, do not go about to enſnare us; do not ſeek occaſion againſt us: 'Tis enough to puniſh us, if found Guilty of what charged againſt us, in our Mittimus. We entreat the Mayor and Court to do us right in this matter, that our Mittimus may be read.

Mayor and ſome others. *Well, you ſhall have it read.*

G.W. Keeper, Where's our Mittimus, produce it, that it may be read, as the Mayor and other Juſtice here preſent have engaged.

R. *Tender them the Oath. Put the Oath to them; If you'l take it, that ſhall ſerve,* &c. *If not, you incur a Pramunire,* &c.

A hiddious noiſe in the Court among ſome under Clerks and Officers about the Oath, *viz.*

Some under Clerks, &c. *What ſay you? Anſwer. Will you take the Oath? Will you Kiſs the Book?*

Clerk reads. *I* Thomas Whitehead *do truly and ſincerely acknowledge, profeſs, teſtifie and declare in my Conſcience*, &c. Here an Interruption, upon his miſtake of *Thomas* for *George*.

G. W. The Oath is none of the Premiſſes contained in our Mittimus, which we are to Anſwer to at this Seſſions, and to be tryed upon.

T. B. Our all is at ſtake. We perceive the Recorder is determined concerning us. We muſt have liberty to ſpeak: We are Free-born *Engliſh* Men [This on the Interruption.]

R. *We have power here to tender you the Oath, without taking notice of any other Cauſe.*

G. W. 'Tis Prepoſterous to run us upon the Oath in the firſt place; we being not committed for that, but for other Cauſes.

R. *You affront the Court. Is that a fit Word to give the Court, to charge the Court with Prepoſterous proceedings* (or to that effect.)

G. W. I do not charge the Court, I do diſtinguiſh between the Recorder in this point, and the Court: He ſeeks to run us upon that firſt, which in courſe is laſt, according to his own Mittimus and Warrant [And is not that Prepoſterous?] Let our Mittimus be read, and that will ſhew we were not committed upon the Oath.

G. W. We ought to have due proceſs or proceeding in due courſe of Law; therefore the Court ſhould know, how we were firſt Arreſted, and turned into Goal by the Sheriff, without Examination, Mittimus or Warrant; and how afterward had out and committed; and what the Mittimus is; What are the Premiſſes contained in it, that we are to anſwer unto.

The Law of *England* is tender of mens Liberties, Properties, Eſtates and Lives, all which are concerned in our Impriſonment; *Lex Angliæ* is ſaid to be *Lex Miſericordiæ, i.e.* the Law of *England* is a Law of Mercy; one Reaſon whereof is, that the Innocent may not be worn or waſted through long Impriſonment, but be brought forth ſpeedily to his Tryal, according to *Magna Charta, &c.*

R. *Look what an Argument or Conſequence you would draw from hence, The Law of England is a Law of Mercy*; 'tis Lex Miſericordiæ

cordiæ, *therefore Thieves or Malefactors, &c. muſt not be brought to condign Puniſhment*, &c. or to that effect.

G. W. That's none of my Conſequence; mine is the ſame that Judge *Cook* doth inſtance, wherein the Law of *England* is *Lex Miſericordiæ*, in that 'tis tender of mens Liberties, and preſcribes a due courſe of Proceedure—— Interrupted—as it may be applyed to our Caſe. Either we are Innocent or Nocent; if Innocent, we ought to be heard, and not delayed in Priſon; if Nocent or Criminal, we ought to have due and orderly proceeding, according to the Law of the Land, that our Offence may the more plainly appear, that others may take warning thereby, and not incur the like Penalty or Suffering. However, let's have fair dealing; let's not be unduely run upon, diverted from our Plea, and our Mouthes ſtopt, ſo that the Court and People here cannot know what we ſuffer for.——

No Free-man ſhall be taken or impriſoned, or diſſeized of his Freehold, or otherwiſe deſtroyed, &c. but by due proceſs and order of Law.——

This *Magna Charta* enjoyns, where in the 29th Chapter 'tis ſaid, *No Free-man ſhall be taken or impriſoned*, &c. *but by the Law of the Land*; that is, by due order of Law, by due proceſs, according to Law. The Law of *England* requires due proceſs or proceeding, from the very firſt Arreſt, taking and impriſoning to the very end and execution of the ſame. Therefore the firſt Arreſt, Impriſoning and Committing us, ought to be known and underſtood, whether it was in due Manner and courſe of Law, Yea or Nay.

Let us have our Mittimus read, we expect it; 'tis granted and promiſed us by the Mayor and others indifferent. A little reſpit in expectation of the Mittimus. But the [a] Recorder ſeemed greatly offended at the Priſoners urging this, and at the Mayor and Juſtices aſſenting to it.

[a] R.

G. W. Seeing, that the Law is tender of *Engliſh mens* Liberties, as that no Freeman ſhall be taken or impriſoned, &c. without due proceeding in Law, &c. 'Tis but meet and reaſonable, that the Court and People here ſhould underſtand what capacity and repute we are under among our Neighbours, that is, whether as Freemen of *England*, and of any Repute among our Neighbours, or as Bond-ſlaves, Rogues, or Vagrants, Renegado's, &c. Hear what

our Neighbours ſay of us; we deſire their Certificates may be read.

R. *What have we to do with your Certificates? will any Swear to them that they are true ones?*

G. W. They are real Certificates; pray let them be read; here they are.

R. *We do not know, but that you might make them your ſelves in Priſon.*

G. W. They are no Fictions: Pray read them, or let them be read; they are from Perſons of Credit and Repute, as Common-Council men, Deputy Conſtables, Church-Wardens, and others.

R. *They ſhall not be read.*

G. W. We beg they may be read: Look upon this Certificate, here's the Perſons own (Different) Hands to it; it may tend to inform the Court, and to remove Suſpition and Jealouſies concerning us [But this would not be granted the Priſoners.] ——

G. W. Seeing our Certificates may not be read, nor ſuffered to be read (which is but hard meaſure) now let our Mittimus be produced [ſeveral expecting the Keeper had ſent for it] Pray let us have our Mittimus produced and read.

R. *We have it not, the Goaler has it.*

G. W. Where is it? Keeper, produce it; thou hadſt it.

R. to the Priſoner, *No doubt you have a Copy.*

G. W. Yes, we have; May I read it?

I crave Liberty of the Court to read it, that the Court may underſtand what we are committed for, and to anſwer to that, this Court is to take Judicial Cognizance of, &c.

Court, The Juſtices asked the Queſtion from one to another to have it read, generally aſſenting thereunto, as being of the Mind it ought to be read.

Juſtice Briggs, *I am of the Mind it ſhould be read; What ſay you Mr.* Bendich?

J. Bendich, *Yes, truly I am of the mind it ſhould be read.*

J. Briggs, *Pray ſpeak to Mr. Mayor* (which was done.)

Mayor to the Recorder, *Sir, the Juſtices are agreed it ſhould be read.*

R. Turning himſelf towards them, as one greatly offended that the Mittimus ſhould be read.

G. W.

G.W. It concerns the Court to let us have our Mittimus read. I am ready to read the Copy (seeing it may not be otherwise produced and read.) Shall I read? We expect that Justice from the Court, that it should be read.

R. *Let them read it then, I am not ashamed of it; then read the other also, for you have them both.*

Court, *You may read it.*

G. W. Now we have the leave of the Court; I hope you'l keep to it: Observe it, 'tis a true Copy. The Mittimus read which followeth.

The Mittimus, viz.

"WHereas *George Whitehead* of the Parish of St *Buttolph* in *London*, Grocer, and *Thomas Burr* of *Ware* in the County of *Hartford*, Maulster, have this day assembled together, with several other Persons, in Disturbance of the publick Peace, and against the Laws of this Realm; and being required to find Sureties for their respective appearance at the next General-Sessions of the Peace, to be holden for the said City and County, to answer the Premisses, which they refused so to do: These are therefore to will and require you, to receive and keep the said *George Whitehead* and *Thomas Burr* in the common Goal, for the City and County aforesaid, until they shall be from thence discharged by due order of Law; And hereof fail not. Given under my Hand and Seal, the 21st day of *March*, *Anno Dom.* 1679. *City and County of* Norwich. *Fra. Bacon.*

"*To the Constables of the Ward of* West-Wymor, *and to either of them, to convey, and to your Keeper of the Common-Goal aforesaid, to receive and keep the said* George Whitehead *and* Thomas Burr, *according to this Warrant.*

G.W. Does the Recorder own this to be a true Copy, Yea or Nay?

R. *I care not whether it be true or falſe; there's another Mittimus againſt you,* &c.

G.W. Let this Mittimus be conſidered firſt: Doſt thou own it to be a true Copy, or no? We have it attefted.

R. *It may be it is, what then? It may be true for ought I know,* &c. [or to that effect.]

G.W. Then pray obſerve this Mittimus, the Tenor of it, what it contains.

1*ſt*, As to the Cauſe of our Commitment.

2*dly*, That is the Premiſſes which we are to anſwer to, and to be tryed and delivered upon.

3*dly*, And that according to Law, or according to due courſe of Law, &c.

1*ſt*, Then the Charge concerns matter of Fact, *i.e.* being at a Meeting. And

2*dly*, What ſuch a Meeting, or how qualified, *i.e. A Meeting in Diſturbance of the publick Peace*, &c.

Theſe are the matters in Charge againſt us, which the Court ought to take Judicial Cognizance of; either to acquit us, if Clear, or to condemn us, if Guilty of any ſuch Meeting.

R. *Read the other Mittimus; you have a Copy doubtleſs.*

G.W. We have a Copy of the ſecond Warrant. But this is not to be evaded; this is the Mittimus; this contains the Cauſe of our Commitment, and the Charge that lies againſt us, &c. which the Court is bound only to take Cognizance of; for we are thereby referred to the Quarter-Seſſions.

R. *Read the ſecond Warrant, that contains the Cauſe, to wit, my tendring you the Oath,* &c. *By taking whereof you ought to ſhew your Allegiance (or Obedience) to the King.*

G.W. Either the Mittimus is a Legal Mittimus, or 'tis Illegal; If Legal, then let's anſwer to the Premiſſes, &c. If the Oath be inſiſted upon, to evade the Mittimus, that will beſpeak either want of other matter againſt us, or elſe that the Mittimus or Commitment is Illegal.

R. *Read the ſecond Warrant,* &c.

G.W. We have Exceptions againſt the ſecond Warrant: If I read

read that, the Exceptions ought also to be read. Shall I read them when I have read the Warrant?

Court, *Well you may read both.*

G. W. Now the Court is engaged and concerned to make good the Liberty granted me, to read our Exceptions, when the Warrant is read.

The second Warrant read, which follows.

"WHereas *George Whitehead* and *Thomas Burr* were lately sent by my Warrant unto the common Goal for the City and County aforesaid, for being Seditiously assembled with some hundreds of other disloyal Persons against the publick Peace, and in contempt of the Laws and Government of this Realm. Now for that the said *George Whitehead* and *Thomas Burr* are suspitious Persons and Strangers to this City aforesaid, and being unwilling to declare that Duty, which they and every true and well-affected Subject ought to bear, by Bond of Allegiance to our Gracious King, they did severally refuse to take and pronounce the Oath of Obedience to the King's Majesty, duely tendred unto them; and after, they were severally required to do the same by me. These are therefore in his Majesty's Name, to will and command you to keep the said *George Whitehead* and *Thomas Burr* in the common Goal for the said City and County, without Bail or Mainprise, until the next General Quarter-Sessions of the Peace, to be holden for the City and County aforesaid; and hereof fail not. Given under my Hand and Seal, the 23d day of *March*, *Anno Dom.* 1679.

City and County of Norwich.

Francis Bacon.

"*To the Keeper of the Common Goal for the City and County of* Norwich.

G. W.

G. W. I hope the Recorder cannot deny the Copy to be true.

R. *I will vindicate it by Law in any Court in* England, *&c.* (or to that effect.)

G. W. Hear the Exceptions againſt this Second Warrant: I'le read them deliberately. If the Court has any thing to object againſt any particular, that may be read over again, after the firſt reading.

Court, *Read them. Go on, &c.*

The Exceptions againſt the ſecond Warrant, for detention of the Priſoners in the Common Goal, without Bail or Mainprize, bearing date the 23d day of March, Anno Dom. 1679.

Exception 1.

"*Firſt*, The Priſoners being committed till Seſſions, there to anſwer to the Premiſſes contained in their Mittimus: Therefore the "Court ought to take Judicial Cognizance thereof (that is, of the "Charge contained in the ſaid Mittimus) for their Tryal and Diſcharge thereupon, by due order of Law, and not to ſuffer the "ſecond Warrant to be inſiſted upon, nor the Mittimus to be "evaded.

Exception 2.

"*Secondly*, Becauſe that after the Command given to the Keeper "to keep them in the Common Goal, until the next General "Quarter-Seſſions, *&c.* The Lawful "Concluſion is wanting, *viz.* [Until "they ſhall be delivered by due Courſe "of Law] See *Cook* in the 2d part of "his *Inſtitutes*, fol. 52. concerning a "Commitment by Lawful Warrant † "The Warrant or Mittimus (ſaith he) "containing a Lawful Cauſe, ought to "have a Lawful Concluſion, viz. *And him ſafely to keep until he be "delivered by Law, &c. And not until the party committing doth "give further Order.* And this doth evidently appear by the Writs "of

† *Note, that the Priſoners foreſeeing, that the Recorder would inſiſt upon the ſecond Warrant, as the Mittimus, did therefore prepare this ſecond Exception.*

" of *Habeas Corpus*, both in the Kings Bench and Common Pleas, Ex-
" chequer and Chancery.

" Again, he ſaith, Secondly, The Mittimus ought to be (as hath
" been ſaid) till he be delivered by Law. *Ibid. Cook 2 part Inſt.*
" *fol.* 53.

" Again, now as the Mittimus muſt contain the Cauſe, ſo the
" Concluſion muſt be according to Law, *viz.* The Priſoner ſafely
" to keep, until he be delivered by due order of Law; and not un-
" til he that made it ſhall give other Order, or the like, *Ibid. fol.*
" 591, 592.

Exception 3.

" *Thirdly*, Therefore the Juſtice had no Legal Power to give
" other Order or Warrant, which
" interpoſeth between his Com-
" mitment of the Priſoners, and their
" Delieverance by due courſe of Law,
" which is mentioned in the Warrant of
" Commitment; but not in this pretended Warrant for detention.
" The Juſtice, who committed the Priſoners, had no legal Juriſ-
" diction over them, thus by himſelf to interpoſe to faſten them.
" They were thruſt out of his hands by their Commitment, and
" thereby referred to the Quarter-Seſſions, for their Diſcharge
" thereupon, by due Order of Law. [Interruption on the reading
the third Exception, in this Objection] *viz.*

The third Exception is deduced by way of inference from the ſecond.

R. *If a man owe twenty men Money, the firſt that Arreſts him lays him into Goal, but the other may lay their Actions upon him, for all that: Or if a man Robs in ſeveral places, and is laid into Goal for one Robbery, and there comes a* Hue-and-Cry *after him for another, ſhall he go free of that, becauſe he is Arreſted already?*

G. W. That's not our Caſe; there's no parity between them: We were not committed to Goal on any ſuch account, as upon any Action of Debt, Robbery, &c. Nor were we Chargeable with any new Matter or Crime, when the ſecond Warrant was writ, more than when our Mittimus was writ, and we firſt committed to Priſon. Pray let me read on; the Matter's further cleared.

Exception 4.

Exception 4

"*Fourthly*, The ſecond Warrant is contradictory to the firſt, in "that it admits of no Bail nor Mainpriſe for the Priſoners, which the "firſt admits of in theſe words, *viz. Being required to find Sureties* "*for their reſpective Appearances at the next General Seſſions.* "Whereas the Priſoners were no more Criminal, when the ſecond "Warrant was made, than when the firſt was made, being then in "Hold upon their Commitment.

Exception 5.

"*Fifthly*, The Priſoners were not Convented, nor had in Exa-"mination before the Juſtice, when the ſecond Warrant was made, "to anſwer for themſelves, as they ought Judicially to have been, "if he had any new Matter unbailable againſt them, or any matter "of ſuch High and Criminable Nature, when he made the ſecond, "which he had not, when he made the firſt, as to render them un-"capable of Bail. Therefore his ſecond Warrant is Illegal and "Extrajudicial, and the Court is Bound to take notice of it.

[After the fifth Exception, the Recorder again Interrupted] *viz.*

R. *While I have to do here, I will not ſuffer my ſelf to be thus re-flected upon. It is a Diſhonour to the Court.*

Court, *How many more have you to read?*

G. W. But a very few; I ſhall quickly have done. You may call for any of them to be read over again, when I have done.

Court, *You may go on. Go on.*

Exception 6.

"*Sixthly*, If it be objected, *That the Priſoners refuſed to take and* "*pronounce the Oath of Obedience to the King, being duely required* "*by Juſtice* Bacon. That is an apparent Miſtake. If the Warrant "of their Commitment be of Credit, it ſhall be Evidence, in that

"it

"it admits of Baile, as before: Which the refuſal of the ſaid "Oath, being ſo required admits not of: But the Priſoners were "not committed on that Account. And therefore the ſecond (or "Collateral) Warrant, which is of another date, and no Com-"mitment, is grounded on a miſtake in that point, and is an extra-"judicial thing: And therefore not to be taken notice of, but re-"jected by the Court, and holden for none.

Exception 7.

"*Seventhly*, Juſtice *Bacon* could not legally nor duly require the "Priſoners aforeſaid to take the ſaid *Oath*, according to the Tenor "and plain expreſs Words of the Statutes, provided in that caſe: "They not being under thoſe Circumſtances and Cauſes, which the "Law provides and limits, as precedent to one Juſtice, his being "Authorized to require it. See 3 *Jac. c.* 4. and 7 *Jac. c.* 6. and *Dalton Juſt. pac. fol.* 94, and 95.

Upon the ſeventh Exception, when read, the Recorder alledged thus, *viz.*

R. *If I find you under any one of thoſe Circumſtances or Cauſes, I might tender you it.*

1*ſt*, But he did not aſſign or ſhew any one Circumſtance that the Priſoners were under to Warrant his alone tender of the Oath. However, he hereby granted, That he had no Power alone to require the ſaid Oath, without limitation of ſuch precedent Circumſtances. *Obſervation added.*

2*dly*, The Circumſtances and Cauſes precedent, and preſcribed by the Statute, 7 *Jac.* c. 6. are;

"The Perſons ſtanding Indicted or Convicted for not coming to "Church, *&c.* or complained of by the Miniſter, Petty-Conſtable "and Church-Wardens (or any two of them) to any Juſtice of "Peace near adjoyning to the place, where any Perſon complained "of ſhall dwell, *&c.* ('Tis only in ſuch caſe, that one Juſtice has Power to require the ſaid Oath: His Power is apparently limitted by the Law to certain precedent Circumſtances) under which Circumſtances and Capacity neither the Priſoners nor the Juſtice ſtood;

and therefore were not *in ſtatu quo*, for the Oath to be legally required of them by one Juſtice.

Exception 8.

" *Eighthly*, The Oath of Obedience could not be legally tendred on the 21ſt of *March*, 1679. being the Lord's day; Becauſe that no Writ, Proceſs, Warrant, Order, Judgment or Decree are to be ſerved on that Day, except in caſes of Treaſon, Fellony, or breach of the Peace (which the Caſe of the ſaid Oath is none of: It is a caſe of it ſelf diſtinct.) See the Act for the better obſervation of the *Lord's Day*, commonly called *Sunday*, *Anno viceſimo nono Caroli ſecundi*, 1677.

[After the eighth Exception being read.]

R. *Now you have prepared a Knife to cut your own Throat withal by that Exception* [*In caſe of Treaſon, Fellony or breach of the Peace*] *your Meetings are againſt the Peace*, &c. (or to that effect.)

Obſervation 1. That the Recorder did not deny the tender of the Oath to be proceſs, or a proceeding in Law: Nay, we preſume he could not deny it.

G. W. That our Meetings are againſt the publick Peace, remains to be proved upon the Premiſſes of our Mittimus——[prevented and interrupted, when theſe Words ſhould have been added, being clearly intended for Argument in relation to the Exception.]

Obſervation 2. viz That the tender of the Oath of Allegiance is a caſe of it ſelf diſtinct from the Caſes of Treaſon, Fellony and breach of the Peace. For it cannot be Juſtice to excuſe or acquit Traytors, Fellons, or Breakers and Violaters of the Peace, by tendring them the Oath of Allegiance, or by their taking it. (That were an eaſie way for Traytors and Fellons, &c. to eſcape the condign puniſhment of the Law) There's other proceſs or proceeding in Law, more properly limitted and aſſigned againſt them. For how many Oaths would not Traytors and Fellons take! if Swearing would free them from the Judgment or condign puniſhment of the Law? What Oaths would not ſuch take to ſave themſelves?

Obſer. 3.

Obſervation 3. That ſeeing the Recorder ſeem'd not to deny the tender of the Oath to be a proceſs in Law: His Anſwer, i. e. *That your Meetings are againſt the publick Peace*, was beſides the point. His requiring the Oath is neither the Proceſs nor the Penalty of the Law, for the breach of the publick Peace: They are diſtinct Caſes and Proceſſes.

R. *Have you any thing againſt the Oath of Allegiance? Or do you except againſt any thing contained in it?*

G. W. We have nothing to except againſt the Declaration of Allegiance contained in it, as to the Subſtance thereof.

T. B. We ſhew our Allegiance by our Converſations; That is, by our living peaceably under the King and Government.

R. *Do you ſcruple any Word (or thing) contained in the Oath? If you do, tell us what it is.*

G. W. We both own and can ſign the Declaration of Allegiance, in oppoſition to the Pope and Popery: And to thoſe Seditious or Treaſonable Practices and Poſitions abjured and renounced by that Oath.

R. *Do you hold it unlawful to take an Oath in any caſe?*

G. W. We are not commited to Priſon to anſwer to Queſtions at Seſſions; but to Anſwer to the Premiſſes contained in our Mittimus.

R. *Do you not hold it lawful to tell a Lye? i. e. an Officious Lye, to prevent an eminent danger*, &c. [or to that effect.]

G. W. No, by no means; that's not a true *Proteſtant* Principle, to tell or maintain an *Officious Lye*, ſo called.

R. *Will you take the Oath*, &c. *If you will, hold up your Hand as a Teſtimony that you do take the Oath, or Swear, that ſhall ſerve*, &c.

G. W. We have a *Proteſtation* or *Declaration* againſt the *Pope* & *Popery*, which was delivered to the Committee of Parliament, and thereby judged ſufficient to diſtinguiſh us from *Popiſh Recuſants*: We crave leave of the Court to read it.

R. *What difference is there between a Proteſtation and an Oath?*

G. W. It may be a Proteſtation or Teſtimony againſt *Popery*;

yet not an Oath. I pray you, let's read our Proteſtation, that we may not lie under Suſpition, without cauſe.

Court, *You may.* ——— *Read it.*

The Proteſtation read in Court, which followeth.

A Proteſtation or Declaration, to diſtinguiſh Proteſtant *Diſſenters from* Popiſh *Recuſants.*

" I *A. B.* do in the preſence of Almighty God, ſolemnly profeſs, and in good Conſcience declare, It is my real Judgment, that the Church of *Rome* is not the Church of Chriſt; nor the Pope or Biſhop of *Rome* Chriſt's Vicar: And his or their Doctrines of depoſing Heretical Princes, and of abſolving their Subjects of their Obedience: Of Purgatory, and Prayers for the Dead: Of Indulgences, and worſhipping of Images: Of adorning and praying to the Virgin *Mary*, and other Saints deceaſed: And of *Tranſubſtantiation*, or changing the Elements of Bread and Wine into the Body and Blood of Chriſt, at, or after the Conſecration thereof by any Perſon whatſoever, are Falſe, Erroneous, and contrary to the Truth of God declared in the holy Scriptures. And therefore that the Communion of the ſaid Church is Superſtitious and Idolatrous.

" And I do likewiſe ſincerely teſtifie and declare, That I do from the bottom of my Heart, deteſt and abhor all Plots and Conſpiracies, that are, or may be contrived againſt the King or Parliament, or People of this Realm, or the true *Proteſtant* Religion therein profeſ-

" ſed

"ſed. And I do hereby faithfully Promiſe, by God's "help, to live a peaceable and ſober Life, as becometh "a good *Chriſtian* and *Proteſtant* to do.

"*And all this I do acknowledge, intend, declare and ſub-*"*ſcribe, without any Equivocation or Mental Reſervation;* "*according to the true Plainneſs, Simplicity and Uſual ſigni-*"*fication of the Words.*

Witneſs my Hand

G.W. This was excepted by a great Committee (and entred the Journal of Parliament) in order to diſtinguiſh us from *Popiſh* Recuſants, *&c.*

R. *We have not a Law to except it: 'Tis not enacted or made a Law. We muſt proceed according to Law,* &c. *You ſeem to declare for the true* Proteſtant *Religion,* &c. *When you diſſent from the Church of* England. || *——I am not in that Point ſatisfied with your Declaration* [or to that effect.]

|| This renders *Proteſtancy* but in a narrow compaſs; as if all *Diſſenters* were no *Proteſtants.*

G.W. We have no Mental Reſervation in the caſe: We are willing and ready to ſign this Declaration——[*Interrupted*] when about adding theſe Words, *viz.* The true *Proteſtant* Religion is wholly oppoſit to *Popery*; It ſtands in Proteſtation or Teſtimony againſt *Popery*; 'Tis a Negative Teſtimony thereof. So far as any *Proteſtants* (in the Church of *England*, or elſewhere) do really proteſt againſt, and ſincerely diſown *Popery*, ſo far are we of the ſame Judgment with them. But there are *Proteſtants* of ſeveral degrees; ſome are more refined (and more clear of *Popery*) than others.

G.W. Is there any Evidence againſt us to prove the Premiſſes contained in our Mittimus? Where are our Accuſers?

R. *The Premiſſes; what are they?*

G.W. The being at an unlawful Aſſembly, in diſturbance of the publick Peace (as is pretended againſt us) Let's be tryed, and either condemned or acquitted hereupon.

R. *I was more favourable to you, than you deſerved; For I could have drawn an Indictment againſt you at Common Law, and brought you*

you to a Tryal upon it: Which being found againſt you, I muſt have fined you.

R. *We who are in Commiſſion for the Peace are* Lex loquens, *and to give the true meaning of the Law. We are not to make Laws, but to Interpret the Law. We are to puniſh or amerce Offenders,* ſecundum Qualitatem & ſecundum qualitatem delicti, &c.

G. W. We are not at preſent about to juſtifie our ſelves, as to matter of Fact. We are willing to hear Evidence what any can prove againſt us, in relation to our Aſſemblies. Let's have due Proceſs.

R. *If the Court will agree to it, wee'l Adjourn: And I will provide an Indictment, and give order that the Witneſſes ſhall be here, and will give it to the Grand Inqueſt: And if they find it againſt you, you ſhall be fined Forty Pound, and Impriſonment till payed,* &c.

Priſoner, It ſeems the Witneſſes are yet to procure. Is there any here, that can give Evidence againſt our Meeting, of the breach of the Peace, &c.

R. *That's a Lye. I did not ſay, I would procure Witneſſes: that's Scandalous.*

T. B. We deſire that no advantage may be taken againſt us for a Word. You ought not to take advantage, &c.

G. W. I intended no offence in the word *Procure*; I intended it not in the worſt Senſe (*i. e.* as by way of Subornation) for I intended no other than according to the Recorders own Words, That Witneſſes ſhould be here (or the like) which doubtleſs, many preſent heard.

Priſoner, Well we refuſe not to be Tryed upon the Charge in our Mittimus, touching our Meeting, &c.

R. *You ſhall have the Oath put to you. And I'le tell you what danger you incur: If you refuſe to take it, you are to be put out of the King's protection, your Lands and Eſtates forfeit to the King, and your Bodies Impriſoned during the King's pleaſure,* &c.

G. W. We underſtand what a Præmunire means, according to the Statute of Præmunire, made in the ſixteenth Year of King *Richard* the ſecond: Though there's no Equity, that ſhould be brought upon us, whilſt we Practice our Allegiance. Suppoſe we cannot for Conſcience ſake Swear: 'Tis but hard meaſure to bring us under the penalty of Præmunire, for that cauſe only. What Equity can there be in it? Seeing we utterly deny the *Pope* and *Popery*,

Popery, &c. (To which we may juſtly add) and abhor thoſe Treaſonable Practices and Poſitions, which are abjured by that Oath.

G. W. Suppoſe we have ſuch a ſcruple of Conſcience, as that we cannot Swear Allegiance, whilſt we both practice it, and are willing to declare it; and to ſign the Declaration (or ſubſtance) of our Allegiance. Can it be equal or juſt to run us to a Præmunire, to forfeit our Eſtates, Liberties, &c. only for want of Swearing? How can that be either *ſecenndum qualitatem*, or *ſecundum qualitatem delicti* (as 'tis ſuppoſed.)

R. *You talk of Conſcience. Friend, Friend, let me ask you one Queſtion. Pray what is Conſcience?*

G. W. 'Tis that Knowledge that God hath placed in man: 'tis a knowing together between God and our own Souls, by Virtue of the Law of God in man, whereby he knows what's Good, and what's Evil; and whereby he is taught to embrace the Good, and ſhun the Evil. 'Tis called, The Law of Truth, the Law of Equity, the Law of Reaſon, &c. Againſt which Law (ſays the Law-Book, *Doctor* and *Student*) no Law nor Cuſtom ought to be brought, but 'tis void.

R. *Although I asked you a Queſtion, I did not bid you Preach upon it —— But Conſcience may be ſeared; as when men will not be reclaimed, but have their own Wills, be they never ſo contrary.*

G. W. 'Tis true; ſome mens Conſciences become hardned and ſeared, through ſinning, and for want of being exerciſed by that Law of God in them: Yet there's an Univerſal Law of Truth in mankind, whereby even the Wicked, and thoſe of ſeared and hardned Conſciences, ſhall finally be convicted and awakened in Torment, &c.

R. *You muſt have the Oath put to you. The Court muſt tender you the Oath of Allegiance: Will you take it?* &c.

G. W. We lie under a Charge in our Mittimus: Let's be diſcharged of that firſt: That contains the Premiſſes, which we are to Anſwer to. Let's not be Hood-winked. Are we diſcharged of the two Warrants that are againſt us, yea or no? The reſt of the Court ought to know, that one thing may not confound another.

R. *You talk Law as you talk Goſpel. Here you talk a little;*

and

and there you talk a little: It is pity you have the benefit of the Law. You put your ſelves from the Protection of the Law.

G. W. The Recorder is a party againſt us: He's our Accuſer, Proſecutor and Judge: He inveighs againſt us: He's determined againſt us: He has told his Reſolution afore-hand, *&c.*

One Juſtice, *You offer Contempt againſt the King, in what you ſay againſt his Miniſter. The Recorder is his Miniſter* (or to the ſame effect.)

G. W. No ſuch matter: I only oppoſe an undue and irregular Proceedure — which is not the King's Will, *&c.*

R. *Your Words tend to ſtir up the People here to Sedition* ——

G. W. We have no ſuch deſign. We only plead our own Rights as *Engliſh* men. The Looſers muſt have leave to ſpeak: Our Liberties, and Eſtates, and Families are concerned: Our Wives and Families ſuffer by our reſtraint, *&c.*

R. *Clerk, tender him the Oath, offer him the Book.*

Clerk reads. *I* George Whitehead *do truly and ſincerely acknowledge, profeſs, teſtifie and declare in my Conſcience,* &c.

G. W. Forbear: We have matter of Plea, which ought to be heard firſt, *&c.*

Note, Here a great Noiſe was made by ſome preſent.

Cryer. *O Yes! Silence in the Court,* &c.

G. W. We beg of the Court, that we may not be thus run upon, but duely heard upon the Proceſs we ſuffer under.

R. *Will you take the Oath? Anſwer; and then you ſhall know the pleaſure of the Court.*

G. W. We ought to be at ſome certainty, whether we are diſcharged of the Premiſſes laid againſt us in the two Warrants. The Recorder was even now for Indicting us at Common-Law: Now he's all in haſte to put the Oath upon us. Thus he appears inconſiſtant with himſelf. He's not now *lex loquens,* to be ſure; for the Law ſpeaking doth not contradict it ſelf. He's not the Mouth of the Law, in running thus unduely and abruptly upon us with the Oath, to evade the Premiſſes, which we were to Anſwer to. Are we diſcharged of the two Warrants, Yea or No? Let's have the plain Advice, or Senſe of the Court.

R. *It may be you may ſuppoſe you be diſcharged. What's the Conſequence you'l infer thence?*

G. W.

G. W. We desire a plain Answer; We are not to be answered by Supposition, nor thence to draw Consequences now. We are not called hither to dispute upon an Hypothetical Argument. We expect a positive plain Answer, and the sense of the Court concerning our Mittimus and Warrant; Are we discharged of them, or not?

Some of the Court to the Recorder, *Let them be discharged of them.*

Some of the Court, *You are discharged of them.*

G. W. Does the Recorder say so? Does he assent to it? Let Proclamation be made of it then, that we may be set at Liberty, in the same Capacity we were in before we were first Arrested.

R. *No, no; seeing you'l take your way, I'le take my way: You shall have the Oath first, and then your Discharge——Will you take the Oath, and then you shall be discharged? What say you to it? Read the Oath, &c.*

T. B. It is a force put upon us: 'Tis very hard dealing we may not be duely heard, *&c.*

G. W. Are the rest of the Justices of the same Mind, that we should be thus run upon? We hope you are not all of the same Mind with the Recorder, in this Proceeding. He is engaged against us: He's resolved to make something of it, and to make us Exemplary in Suffering.

R. *Stop his Mouth; take him away——They had not only need to have their Hats pull'd off, but their Mouth stopt also.*

This the Prisoner did not fully hear, others affirm they heard it.

G. W. Pray hear us; we have more to offer, as about this tender of the Oath, to shew how undue it is, if you'l but suffer the Law to be read, which we desire. [But we ought first to have had Proclamation made for our Discharge from the two Warrants.]

R. *If we should make Proclamation, and let you go, we should be Laught at; No, no. I see you lay upon the catch: We will not discharge you. Now we have you hear, we shall not let you go, for to send a Warrant after you, to fetch you again. Will you take the Oath, or not?*

G. W. Is this intended for a first tender, or a second? We desire an Answer.

R. *We'll tender it you, de Novo; It shall be for a first tender; and if you will not take it, you shall be committed till next Sessions, &c.*

[Clerk reads the Oath.]

Clerk, "I Thomas Burr, *do truly and sincerely Acknowledge, "Profess, Testifie and Declare in my Conscience, &c.*

G. W. We appeal to the Mayor, and the rest of the Justices. The Recorder is a Party against us; he has determined against us aforehand: I'le prove, that he is no competent Judge in our Case, if I may be heard — Interruption — Are we discharged of the two Warrants? Pray let's have fair and plain Dealing: Do not thus force upon us, 'tis unfair and undue Proceeding. Let's be discharged of the two Warrants first, before we be put upon an Answer: We ought not to be put to our Answer, but upon due process, *&c.*

Some of the Court, *You are discharged from those two Mittimusses. Clerk, read their Discharge.* [The Clerk reads what the Recorder had caused him to enter into the Book, to this purpose]

Clerk, "George VVhitehead *and* Thomas Burr *are discharged* "*of the Matters contained in their two Mittimusses. And the Oath* "*of Allegiance, and the Testament, to Swear in open Court* —— "*at this present Sessions was severally tendred to them; and the said* "George VVhitehead *and* Thomas Burr *having severally refused to* "*take the said Oath of Allegiance, it is therefore ordered, That the* "*said* George Whitehead *and* Thomas Burr *be committed to the Com-* "*mon Goal of the said City, there to remain without Bail or Mainprise,* "*until the next Quarter-Sessions, &c.* [or to the same effect. The Copy of Order being more fully transcribed hereafter, according to the Goalers Copy.]

G.W. The latter part is not true; we have not yet refused the Oath; we were not duely nor regularly brought upon that point, as to give a positive Answer, because of the other precedent Charges, which we were to answer to. We have yet matter of Plea about the Tender of the Oath, *de Novo*, in Court. We request further time to be heard upon an Adjournment (before we give our positive Answer) —— We desire to know upon what Law or Statute 'tis tendred. [No Answer was given to this Question.]

R. *You have stronger Lungs than I. I understand you had a Feast last Night, &c. — Adjourn the Court. Take them away Goaler.*

G W.

G. W. Priſoner, Pray let's have more time to conſider, and ſpeak to this point. I entreat that I may have leave to read the Clauſe in the Statute, that concerns the tender of the Oath.

Note, Theſe Endeavours of the Priſoners, to be heard, after the pretended Order was entred, was, becauſe the Priſoners did not believe, that the Juſtices, or greater Number of them, did concur with the Recorders proceeding againſt them; but that they had more, both of Moderation and Juſtice in them; and that he carried things on, too much over their Heads, and all to run down and enſnare the Priſoners, to Oppreſs them, and continue them under Suffering.

Officers, *The Court Adjourned.*

Priſoner, G. W. Held by the Bar, preſſing to be further heard (after the Adjournment) when the Court met again, and for the Statute to be read about the Oath (Neither whereof would be granted the Priſoners) but two of the Keepers pulled the Priſoner away.

Priſoner, Take notice, that we have not yet refuſed the Oath, being not duely nor regularly brought upon that point; but we have owned the Declaration of Allegiance, contained in it; * and do ſtill freely aſſent to it, in Oppoſition to, and Abhorrance of all thoſe Treaſonable Practices, Poſitions and Principles, abjured and renounced by that Oath; though we are Conſcientiouſly afraid to Swear it, only with reſpect to Chriſts Prohibition, in the caſe of Swearing.

* *Theſe laſt words are ſince added, the Priſoner being hurried away that he could not then ſpeak them out.*

Note, *That on the 3d day of the Month called* May, 1680. *being about five dayes after the Priſoners were thus proceeded againſt in Court, the Recorder,* Francis Bacon *was voted out of Place by the Common-Council, &c.*

Alſo note, *That divers of the ſaid Recorders Reflections and hard Speeches againſt the Priſoners, are purpoſely omitted in the foregoing Account for brevity ſake, and with reſpect to the moderate Reader, by whom we would not be thought to Over-charge any Perſon, though he was an Adverſary; therefore we have in ſome particulars been more ſparing, than we might have been.*

Here follows a Copy of the Commitment *from the said Seſſions.*

The City of *Norwich*, and County of the ſame, at the Seſſions, holden the 19th day of *April*, 1680.

"GEorge Whitehead *and* Thomas Burr *are diſcharged of the* "*Matters contained in their Mittimus and Warrant. And* "*the Oath of Allegiance, and the Teſtament to Swear upon in open* "*Court, by order of his Majeſties Juſtices of Peace, at this preſent* "*Seſſions, was tendred ſeverally to them; and the ſaid* George "Whitehead *and* Thomas Burr *having ſeverally refuſed to take the* "*ſaid Oath of Allegiance. It is therefore ordered, That the ſaid* "George Whitehead *and* Thomas Burr *be committed to the common* "*Priſon of the ſaid City, there to remain without Bail or Mainpriſe* "*until the next Quarter-Seſſions to be holden for the City, according to* "*the Law.*

This is a true Copy, by me *Thomas Gaywood*, Goaler. } *Per Curiam* *Corie.*

Here follows a Copy of the Priſoners Certificates, which the Recorder, Francis Bacon, *would not permit to be read in Court.*

"THeſe are to Certifie all, whom it may concern, That *George* "*Whitehead* of the Pariſh of St *Buttolph Biſhops-Gate, London,* "hath lived in the ſame Pariſh for about Ten Years laſt paſt in good "Repute, and is eſteemed a man of a Competent Eſtate, and hath "ſined for all Offices in the Pariſh, ſave Church-Warden, and hath "demeaned

"demeaned himself Peaceably in his Converſation; and he hath "never been accounted nor reputed to be *Jeſuit* or *Papiſt*, nor any "way Popiſhly affected. All which we Certifie, under our Hands.

John Freeman, *Thomas Fyge* } Common-Council-men.
John Ruſſen, Deputy.
Gilbert Eaſt, *John Osburn* } Church-Wardens.
John Sumner, Conſtable.
Charles Bathurſt
Thomas Dawſon
Nicholas Harding

London, *April* the 22d day, 1680.

"THeſe are to Certifie any Perſon or Perſons, whom it may "concern, That *Thomas Burr* of *Ware*, in the County of "*Hartford*, Maulſter, hath lived and been a Trader in Malt for "about Fourteen Years paſt; and is a man whom we judge of a good "competent Eſtate, and of good Credit and Reputation among his "Neighbours in this place, and hath never been accounted a *Jeſuit* "or *Papiſt*. All which we Certifie under our Hands.

Giles Roe, *Henry Hart* } Church-Wardens.
John Lark, *William Meakes* } Conſtables.
John Perrot
Henry Peach
Thomas Johnſon
Richard Dickinſon
Rivers Dickinſon
Edmund Peaſt
Iſaac Hadſley.

Ware in *Hartfordſhire*, this 14th day of *April*, 1680.

A Copy of the next Letter, after the foregoing Proceedings in Court, delivered to the Mayor, &c.

Friends { The *Mayor*, *Justices* & *Aldermen* } of this City *Norwich*.

WE do acknowledge and kindly resent that Indifferency and Moderation towards us, which we beheld among you, when before you in your Court of Sessions, as also the Justice you did us, in making way for the reading our Mittimus, our Exceptions, our Declaration against *Popery*, and the fixing of our discharge in Court, from the matters contained in our Mittimus and Warrant: whereby we are the more encouraged to make this one small Request to you, which is, That you will please but to afford us the Liberty, to come before you in your Council-Chamber, (though it be with a Keeper) that we may shew you one material Point of Law in the Statute Book, relating to this *De novo* (or New) tender of the Oath, (in your Quarter-Sessions) which we now suffer under, it being the same Point that we were earnest to have shown you out of the Statute Book, but were forcibly prevented.

In granting us this small Request, you may happily be capable of doing your selves and us more Justice and Right, than you may at present be aware of. 'Tis not too late to reverse an Error, and embrace Truth, when made appear in any Case; nor will any sincere Mind shun the Discovery of either. 'Tis in Real Love and Good Will to you, this Proposition (by way of Request) is made for your own sakes, as well as ours. We design no Tediousness to you; our Case is now contract into a narrow Compass: What we have to shew you is both very brief and easie to understand; 'tis directly Statute-Law. Our Confinement before Sessions was but One Mans Act; but now others of you are concerned. Howbeit, we may reasonably

Reaſonably (as well as Charitably) think and believe that both the forcible tender of the Oath (whilſt not actually diſcharged and freed from our Impriſonment) and the Concluſion againſt us, for our detention, were rather the haſty and indiſcreet Acts of one Perſon (carried on over your Heads) than of the whole Court or Major part thereof, and hope, that as you calmly come (in Gods ſight) to the Righteous Teſt of Conſcience and Truth, and upon better deliberation conſult the Law in our Caſe; 'twill ſo appear to your Underſtandings. We are yet willing Charitably to think and hope the beſt concerning you in this weighty Concern of our Liberties, Eſtates, Families, and conſequently our Lives, which are expoſed to Jeopardy and Ruin, through our preſent Suffering among you. Nevertheleſs our Caſe is not deſperate in the Eye of the Law. They who are appointed Miniſters of equal Law and Juſtice ought to underſtand both before they paſs Judgment, or inflict Puniſhment. As *Michael Dalton* puts the Commiſſioners of the Peace in mind, how that *Juſtice may be perverted many wayes, if they ſhall not Arm themſelves with the Fear of God, the Love of Truth and Juſtice, and with the Authority and Knowledge of the Laws of this Realm, &c.* Among which Cauſes of Pervertion, he mentions theſe, *viz.*

"I. FEAR. *When fearing the Power or Countenance of another,* "*they do not Juſtice*; quoting *Deut.* 1. 17.

"II. PERTURBATION *of Mind, as Anger, or ſuch like Paſ-* "*ſion*; quoting *James* 1. 20.

"III. IGNORANCE, *or Want of True Underſtanding what is* "*to be done.* Ignorantia mater erroris.

"IV. PRECIPITATION, *or too much Raſhneſs, as when they* "*proceed haſtily without due Examination and Conſideration of the* "*Fact, and all materiul Circumſtances, &c.* [Thus far *M. D.*]

We deſign no Perſonal Reflection, but only tender Information and Caution in theſe Paſſages. The thing we aim at is but the leave of a few Minutes before you, to ſhew you the Point of Law mentioned, which we forbear to relate in Writing to you, as not being ſo proper or ſeaſonable for us to do at preſent, conſidering the Circumſtances, which we are under. We are

Your Real Friends and Well-wiſhers,

Norwich-Priſon, the 8th of the 3 Mon. called *May*, 1680.

George Whitehead
Thomas Burr.

POST-

POSTSCRIPT.

THis Proviſion we would further add, That if ſo be our Propoſal of coming before you in your Council-Chamer may not be accepted, or be not thought feizable, we then deſire you would pleaſe to tranſmit our Requeſt to your Quarter-Seſſions, yet in beeing upon Adjournment, that we may have the Liberty at your next meeting in your Court of Seſſions, briefly to offer what we have to Plead in point of Law, to your ſerious (and more deliberate) conſiderations about the late tender of the Oath, *de Novo*, according as we deſired farther time for the ſame purpoſe, when laſt in Seſſions.

Here follows the ſubſtance of a farther Application, made by the Priſoners aforeſaid, to the *Mayor*, *Recorder*, *Juſtices* and *Aldermen* of the City of *Norwich*, delivered to them the 17th day of the 3d Moneth, 1680. being the laſt day of the Quarter-Seſſions.

† Whoſe Names are not thought meet to inſert in this place. Some Magiſtrates of *Norwich* underſtood who they were.

THe firſt part relates to the *Mediation of certain Perſons of Note and Eminency*, † *on the Priſoners behalf, and particularly by a Letter from* London *from a Perſon of Quality, on ſome Application made by ſome of their Friends there, unto which the Priſoners refer the Magiſtrates, in theſe words*, viz.

We therefore requeſt, that you would pleaſe to call for the ſaid Letter, and know the Contents thereof, that if ſuch Mediation may take effect with you, for our Enlargment, we may not put you nor our ſelves to trouble, upon any further Motion. Otherwiſe, if you be not pleaſed to accept thereof, ſo as to grant us our Enlargment, we have another Propoſition to make, on this wiſe, *viz.*

Whereas

Whereas we the Priſoners, whoſe Names are hereunto ſubſcribed, do find our ſelves oppreſſed and grieved, not only by the Illegal Proceedings (as we conceive) of the late Recorder, in our Commitment and detention in Priſon by two Erronious Warrants, which were reverſt in Court, but alſo by his late Commitment from Seſſions, which not only we do conceive to be illegal and contrary to the Form and Order of Law preſcribed in the Statutes, but alſo we have the Advice and Judgment of able Counſel in the Caſe, averring, *This laſt Commitment Not Good*, BUT AGAINST LAW, &c.

Upon which Premiſſes (if you pleaſe not to allow us Remedy on the Mediation aforeſaid) we do in Humility requeſt, That you will pleaſe to call us into Court, before this Seſſions be ended, and grant us the Liberty but briefly to offer our Exception in point of Law, unto your ſerious and deliberate Conſiderations, in order to afford us ſo much Relief and Right, as may either by apparent Law, Equity or good Conſcience be allowed us.

Your Friends and Priſoners,

Dated, *Norwich*-Goal, the 12th of the 3d Moneth, 1680.

George Whitehead
Thomas Burr.

ON the aforeſaid 17th day of the 3d Moneth, 1680. our Friends, *Mary Duncon* and *Mary de France* of *Norwich* attended the Court of Mayor and Juſtices in their Council-Chamber, and delivered the aforeſaid Application and Certificates to them, where they were read, as the Priſoners were informed.

After the Mayor and Juſtices came down into the Hall, our Friends aboveſaid attended the Court of Seſſions, and moved for the Liberty of the Priſoners (as ſome of the Juſtices had before directed) To which, others of them ſaid, *That could not be, for they were committed by Order of Seſſions*; which the Steward (being then Judge of the Court, in the Recorders abſence) cauſed to be read. *Mary Duncon* then requeſted, the Priſoners might be called into Court, and heard, the new Recorder having promiſed her (as ſhe affirmed immediately after ſhe came from him) *That they ſhould be called into Court*; *and that if it appeared they were committed contrary*

to Law, they ſhould be Diſcharged. But he being then abſent, they were not called into Court.

Samuel Boulton of *London* being preſent, got leave of the Court (upon his requeſt) to tell them, *That he did ſuppoſe it was contrary to Law, to make the Firſt Tender of the Oath in Court; and that 'twas done on purpoſe to Enſnare the Priſoners.* Whereupon the Steward called to bring the *Statute-Book*, to ſee whether it was ſo or not; but in the interim (after a little Conſultation) the Court was diſmiſt on a ſuddain, before the Book came. So the Priſoners were detained until the next Quarter-Seſſions. Whereof an Account is hereafter given, as to their Diſcharge.

Here follow the Copies of certain Letters of Importance, from the ſaid Priſoners, which were ſent and delivered to the Magiſtrates of the City of Norwich, *after the aforeſaid Quarter-Seſſions.*

To the New Recorder.

FRIEND;

WE having met with a Diſappointment, by reaſon of thy abſence from Seſſions, hath occaſioned theſe few Lines, whereby we acquaint thee, That we apprehending our ſelves wrongfully Impriſoned and Detained, by the means of the late Recorder; having alſo Advice of Counſel, concurring with our Apprehenſions in the Caſe, did expect, according to thy Expreſſions to our Friend *Mary Duncon*, to have been called into the Court of Seſſions this day week. Some of our Friends having had encouragment by ſeveral of the Magiſtrates, to requeſt our Liberty in Court, they accordingly attended and moved on our behalf; but our being called was oppoſed by the Clerk. Afterwards we ſent to the Steward about it, who expreſt himſelf willing to do us any good he could, but

but ſeemed to blame us, that we had not ſent to thee about it, and adviſed us ſo to do, he being unwilling to act without thy Concurrence; wherefore we have ſent this Bearer on purpoſe, and Requeſt That thou wouldſt pleaſe to ſignifie thy Mind to the Steward, *Whether or no our Suffering Caſe may be taken any further Notice of among you, in order to our Relief.* We are hardly dealt by, and think we ſhould not be delayed, nor ſlighted under a wrongfull Impriſonment. We hope our Caſe will be better inſpected, than as yet it has been. The Magiſtrates willingneſs here, for our Relief, now depends upon thy Counſel. We deſire to know your Minds in it, with as much Expedition as conveniently may be. We reſt

Thy Friends and Well-wiſhers,

Norwich Priſon, the 24th of the 3d Moneth, 1680.

George Whitehead
Thomas Burr.

This was delivered to the New Recorder of Norwich *at his Country Houſe near* North-walſon, *by* John Fedemand *and* Thomas Haward *of* Norwich.

To the Recorder and Steward of Norwich.

FRIENDS;

SEeing we have made divers motions to be heard by the Magiſtrates of this City, before the Seſſions was ended, concerning our laſt Commitment, but were prevented, although we have intimated our Apprehenſions of our wrongful Impriſonment and Detention, by the means of the late Recorder's ſeverity againſt us. And you being the Perſons, upon whoſe Advice the Magiſtrates of this City have Dependance, We do entreat you tenderly to conſider us and our ſuffering Condition, ſo far as to admit us but a little gentle Diſcourſe with you, or either of you (though it be before any of the Magiſtrates of this City, whom you ſhall think fit) in

order to give you an Understanding of our Case, whether any Relief thereby may be afforded us or not, we leave that, but hope you may be justly Instrumental for our Relief: 'Twill be no disparagement to you, to be sure, we being oppresst and restrained thus far from our Families, &c. as we think (at least) contrary both to equal Law and good Conscience; And we are not willing to lie under any Mistake or Prejudice against any Person whatsoever, No; though it was one that hath dealt most Prejudicially with us, we are sure we mean well. However, pray now take a little opportunity to consider our suffering Case, so as we may not be slighted in this Condition. We can assure you, That the late Recorder's Proceedings against us are not well resented by certain Persons of Quality and Power (and it will be no honour to this City to detain us under this Restraint, upon the Foundation that he has prejudicially laid against us) but here we must at present be sparing; time may possibly evince more of that. We remain

Your Friends,

Norwich-*Goal, the* 29*th* of *the* 3*d Mon.* 1680. George Whitehead
Thomas Burr,

Prisoners for our Conscience towards God.

After these two last Letters were sent to the Recorder, upon the Prisoners request, for a little Discourse with him and the Steward about their Case, they were called over into the Council-Chamber (and the Keeper with them) before him, and the Steward, and *Thomas Corys, &c.* and there admitted to open their Case, and to enter into some Discourse about the Proceedings against them. They did not seem to vindicate the other Recorders Proceedings, only some little Controversie was about the late tender of the Oath, *de Novo,* in Court, for which the Recorder insisted on the Word's [*Or any Other Person, &c.* 3 Jac. c. 4.] which are farther opened hereafter, according to what the Prisoners then alledged. However, the Prisoners kindly acknowledged their Civility in giving them that Opportunity of Discourse, *&c.*

A

A few Lines to the *Mayor*, Court of *Aldermen* and *Justices*, on some other Considerations more particular.

FRIENDS;

WE being injured and hurt in several respects, by this our Confinement, for above this three Moneths past, by means of the late Recorders Prejudicial and undue Proceedings against us, both before and at your last Quarter-Sessions, together with your then Passiveness therein, * and all this under a wrong Suspition or Pretence of being *Papists* or *Popish Recusants*, secretly suggested againstus; which being intimated to some Persons of Quality & Credit at *London* (who have better knowledge of us) & by them, the Earl of *Yarmouth* being moved on our behalf, he was pleased to mediate for us by Letters, to be communicated to some of the Magistrates in this City, in which we understand he hath lately signified what Testimony he hath of our being NO PAPISTS, and therefore desires, *That you would shew us all the favour the Law will allow us*, (or to the same effect, as we have been informed) which cannot reasonably intend, *The Rigour of the Law*, muchless to be detained in Prison, contrary to Law, as we still conceive we are.

* *That was about the Oath, and his last Commitment from Sessions.*

We therefore entreat you, *First*, to consider *what favour* the Law allows us as *No Papists*, nor Persons so reputed, as indeed we are altogether averse to Popery.

Secondly, As Persons injuriously Imprisoned, and detained under a wrong Suspition of what we really are not. *We Request our Liberties*; which *Request* we think our selves both obliged in Conscience and warranted by Law, to make unto you, as Justices of the Peace, according to the Statute made in the 4th Year of K. *Henry* the 7th, Cap. 12. which is worth your while to read over, and seriously to consider the tenor and purport thereof.

From your City-Goal, the 19th of the 4 Mon. 1680.

Your Friends and Prisoners,
G. W. T. B.

For

For the *Mayor* and *Juſtices* of the City of *Norwich*.

Friends, you are intreated to peruſe the following Narration.

THe great pretence for this our ſtrict detention in your Goal, being the late order from Seſſions, we think our ſelves obliged for your ſakes (as well as our own) to re-mind you, (as hoping you will give the Oppreſſed leave to offer their Complaints) That we eſteem our ſelves injured, in that we were not ſuffered to be called into Court the laſt Day of your Quarter-Seſſions, for an opportunity to have made our Exception, which we conceive we had good ground for both in Law and good Conſcience; eſpecially, ſince we had Promiſe of ſuch an opportunity, and that if it appeared our Commitment were contrary to Law, we ſhould be diſcharged: This we underſtand was made to one of our Friends, who (upon encouragement by ſome of the Juſtices) moved for our Liberty in Court; which not being granted then, that we might be called into Court; but being prevented of both, we are detained to our, and our Families, great prejudice in divers reſpects; our preſent reſtraint being alſo a depriving us of our Rights in the Creation, and to the impairing of our Healths. The late Order from Seſſions, for this our reſtraint without Bail or Mainpriſe, was of *Francis Bacon's* ordering, and we know no other Law than that to detain us ſo ſeverely untill next Seſſions; and no doubt you had Power to Reverſe it before the Termination of the laſt, when the Illegality thereof had been made appear (which we endeavoured an opportunity for) as well as an Error in proceſs may the ſame Term be reformed in the ſame Court. But that Seſſions is over, the opportunity is ſlipt: whoſe Omiſſion was that? Not ours we ſought & earneſtly requeſted for it in real Love and

Wing. Body of the Common-Law, p. 88.

and Good Will, as charitably thinking to find ſo much of Humanity, Tenderneſs, equal Law and Right among you towards us, as not thus to delay us in Priſon upon the ſaid Order, which we are really perſwaded will not redound to the Honour of your City or Court, conſidering our Innocency, and the Circumſtances of the Perſon, which was the cauſe of it. And we cannot reaſonaby ſuppoſe, that ſuch an order ſhould bind your Conſciences from anſwering the Law of Chriſt, *To do to others as you would be done by*; and the Law of our Nation, *Not to deny, defer or delay Juſtice or Right*, eſpecially to any Free-born *Engliſh* man; Illegal or unjuſt Impriſonment, more eſpecially where prolong'd, being accounted odious in the Eye of the Law; and that you may more directly and clearly perceive, that to detain us in perſuance of *Francis Bacon's* Procedure and Order againſt us, will not redound to your Reputation and Honour, either as Civil Magiſtrates or *Chriſtians*. Pray conſider how irregularly and arbitrarily he has acted towards us in his whole Procedure.

Mag. Charta cap. 29. *J. Cook Inſt.* 4 part, fol. 182.

1*ſt*, In his ſending the Sheriff to apprehend and impriſon us for being at the Meeting the 21ſt of *March* (ſo called) 1679. (as he confeſt in Seſſions he did, as ye may remember) by which means we were turned into the Goal by the Sheriff, like Cattle into Pinfold, and their detained for ſome Hours, without Examination or Mittimus, other than *Francis Bacon's* verbal Commiſſion: How arbitrary and Illegal was this! Ye that are Wiſe men, Judge what abſolute Monarch could have ſhewn more Dominion in ſuch a Caſe? Conſider the Conſequence of ſuch proceedings.

We hope your Deſign in chuſing Recorders, is for a Juſt and Legal end, to aſſiſt you as the King's Miniſters of equal Law and Juſtice, and not to be as Kings and Emperors over your City, nor that any one ſhould aſſume ſuch Prerogative or Preheminence, ſo contrary to Law and the King's Intereſt.

The King hath a Prerogative in all things that are not injurious to the Subject: but the late Recorder did aſſume a Prerogative or Dominion injurious in this his Proceedings: Alſo——

Wing. p. 2.

2*dly*,

2*dly*, In his inflicting a two fold punishment for one supposed Offence, *i. e.* Fining and Imprisoning for being at a Meeting, contrary to that very Act against Conventicles, 22 *Car.* 2. which was not made to commit the Persons to Goal, but only to fine them; albeit our Meetings are no otherwise designed by us, than for God's Worship and Service. When he first examined and committed us, he told us thus, viz. *If you will neither pay your Fines, nor take the Oath of Allegiance, I must commit you to Prison; you may chuse, whether you will pay your Fines, take the Oath, or go to Prison.*

To excuse these before-mentioned proceedings against us, being all on the 21st of *March*, 1679. which was the Lord's day, when we excepted against them, as contrary to a late Act of Parliament, for the better observation of the *Lord's day*, 29 *Car.* 2. he alledged, That our Meeting was against the Peace. And what fellows? Therefore he might first send the Sheriff to apprehend and imprison us without Mittimus, and after that Fine us, and tender us the Oath the same Day; and if we would neither pay our Fines, nor take the Oath, then commit us to Prison.

Note, That the said Act for the better observation of the *Lord's day*, prohibits the serving or executing any Writ, Process, Warrant, Order, Judgment or Decree, excepting in Cases of Treason, Fellony or breach of the Peace.

If in these, or any of these Cases, the requiring Persons to take the said Oath, and their taking of it will serve the turn to excuse them of such Crimes; than that Oath may be a Cure for all Diseases or Enormities against Law of what different species or kinds soever. The Justices need but require Treasonable, Fellonious fighting and quarrelsom Persons to take the Oath of Allegiance, and their taking of it shall quit them of all Pains and Penalties: But we hope you are so rational as to understand, that legally to require the said Oath is a distinct Case or Process from the cases of Treason, Fellony, or breach of the Peace; and that there is no more reason to require the said Oath in any one of these Cases, then in all of them.

3*thly*,

3*thly*, In his laying our Fines upon other perſons, and impriſoning us for being at the ſaid Meeting, and giving out Warrants to break open their Doors, and diſtrain their Goods, upon a falſe pretence of our Poverty, after we had plainly ſignified the contrary to him, both as to the competency of our Eſtates and known Habitations, ſo as he could have no reaſon to judge or think us unable.

But beſides the Illegality hereof, pray what Juſtice or Conſiſtance could there be between his Fining others becauſe of our Poverty, and committing us to Goal becauſe of our Non-payment thereof? He impriſons us becauſe we do not pay our Fines; and layes our Fines upon others becauſe we cannot pay them.

But this is not the leaſt inconſiſtance in his perplexed Proceedings: He demands 20*l* of each of us for Preaching; and becauſe we did not depoſit the Money, he commits us to the common Goal, upon pretence of being aſſembled in diſturbance of the publick Peace (by a Warrant made in his own, and not in the King's Name) and then layes our Fines upon others, which was all for one and the ſame Meeting. And theſe proceeding are as reconciable, as if he had Fined us for Praying, and committed us to Goal for Fighting whilſt at Prayer; But we are more Serious in our Devotion, and Innocent in our Deportment, bleſſed be the Lord our God.

We further intreat you to view the ſaid *Francis Bacon's* proceedings againſt us at your Quarter-Seſſions, the 28th of *April*, 1680. and ſeriouſly to conſider, whether he did therein proceed either legally or juſtly with us; As,

Firſt, In his appearing a Party, an open Adverſary, an Accuſer a Villifier of us (the Priſoners) in the open Court of Seſſions, telling us, that there is a Law to Hang ſuch; and that the Church would never be at quiet, till ſuch Fellows were Hanged; (as you may well remember) to the ſame effect he alſo told us, when he firſt committed us.

Secondly, In his denying & oppoſing the reading of our Mittimus in open Court, contrary to all Reaſon, and to the mind and declared Judgment of the Mayor and other Juſtices upon the Bench (as you may alſo well remember) how imperiouſly did he behave himſelf in this?

Thirdly, In his not ſuffering our Certificates to be read in Court, which we earneſtly then and there requeſted, (as you alſo may remember) which were from certain Officers, and other credible Perſons of our Neighboured, to remove the Calumnious Aſperſion and Suſpition of our being *Jeſuits* or *Papiſts*, prejudicially inſinuated againſt us.

Fourthly, In his frequently and abruptly cauſing the Oath of Allegiance to be offered, or put to us, on purpoſe to enſnare and circumvent us, before the Proceſs or Charge of our Commitment were determined in Court, notwithſtanding our Mittimus ſignified, that we were then to anſwer to the Premiſſes therein contained, and alſo begged, that for God's ſake and the King's ſake (as you may remember, with our reaſon thereof) we might be heard in our Plea and Anſwer to the Premiſſes, upon which we were committed, before any other Proceſs were entred upon againſt us.

Fifthly, In his not ſuffering the Law to be read in Court, (which we earneſtly begged) upon which he forced and required the ſaid Oath of us, as he had determined aforehand, in order to run us to a Præmunire at the ſame Quarter-Seſſions, as he threatned when we were firſt before him, underſtanding that we did fear an Oath, or to Swear in any caſe.

Sixthly, In that when our Mittimus, and his Erroneous Warrant, and his firſt pretended tender of the Oath (by himſelf alone) were reverſt by our being diſcharged in Court from the matters contained in them, he would not ſuffer us to be actually freed of our Impriſonment; but in perſuance of his premeditated Deſign forced a tender of the Oath, *de novo* (as his Words were) and an order immediately to be entred for our Commitment to Goal without Bail or Mainprize, untill the next Quarter-Seſſions, without allowing us any further time for Conſideration or Anſwer, as we deſired.

Seventhly, His precipitancy and raſhneſs towards us, was ſuch therein, that the reſt of the Juſtices, doubtleſs, could not take ſo much time and deliberation, as to conſider of theſe his Proceedings, before he concluded the ſaid order of Commitment, wherein they might very well, and but juſtly, have given him a Check, & put a ſtop to his ſwift and furious Motion, for a more general and ſerious conſideration of the Caſe among them, and not have ſuffered him to

make

make ſuch a ſuddain Concluſion againſt us, as *pro Curiam*, or by their Authority (for Juſtices ought to ſee with their own Eyes, and be ſure their Judgment is Juſt before they give their Judgment, or aſſent in any Judicial caſe) ſeeing they had ſuch fair Warning alſo in our publickly deſiring to know, If you were all of a mind, or agreed againſt us, as to that ſevere Commitment, charitably hoping (as we do ſtill) that you were not; but no Anſwer could we have in that Caſe: The Recorder was in ſuch haſte for that Concluſion againſt us, and the Courts Adjournment, and to have the Goaler to take away the Priſoners; He would have you to underſtand, he wanted his Dinner, upbraiding us (the Priſoners) with an idle Story of our being at a Feaſt the Night before.

Eighthly, Beſides, his *de novo*, tender of the Oath to us, the Priſoners, in Seſſions appeared neither Legal nor Formal, according to the form of Statute 3 *Jac.* Cap. 4. which intends *Popiſh* Recuſants (as appears plainly by the Title and Preamble thereof) which we the ſaid Priſoners were not (nor are we *Papiſts* at all) but it was alſo againſt the Form and Courſe of procedure, both of the Statute 3 *Jac.* 4. (allowed even to *Popiſh* Recuſants Convict) and that alſo of the 7 *Jac.* Cap. 6. for a firſt tender of the Oath, to be made out of Court or Quarter-Seſſions, and a Commitment of the party refuſing, and the ſecond tender in the open Aſſize or Quarter-Seſſions, in ſuch manner and on ſuch precedent Cauſes as the Law directs, and wherein we were unconcerned.

And moreover, neither of theſe Statutes of King *James* do warrant any ſuch order for Commitment of Perſons to Goal from one Quarter-Seſſions to another, without Bail or Mainprize, as is the late order of our Commitment. Pray ſee what *Council* ſaith in relation thereunto, Viz.

1*ſt*, "I conceive the third Warrant is not good in the Commit-"ment. For as 'tis true, that Act ſays, The Offenders ſhall incur "a Præmunire; yet it doth not in the leaſt give them any Power "to commit the Perſon, and therefore, & for that its without Bail or "Mainprize, and to a certain time, and not leaving it to the Law. "I conceive its againſt Law, and will be remedied, &c.

2*dly*, He further ſaith, "By the Statute of 3 *Jac.* 4. The party "that is to take the Oath, is to be one that is Convicted or Indicted "for Recuſancy, or not taking the Sacrament twice in the Year

"paſt; and the Parties to tender it, are either the Biſhop or two "Juſtices of the Peace, whereof one of the *Quorum*, and upon re- "fuſal, they may commit without Bail or Mainprize, untill next "Aſſize or Seſſions, where it may be again tendered. By the Sta- "tute 7 *Jac.* 6. any one Juſtice may tender the Oath to one that "is preſented, Indicted or Convicted for not coming to Church, "or receiving the Sacrament, according to Law; or if the Mini- "ſter, Petty-Conſtable and Church-Wardens, or any two of them, "ſhall complain to any Juſtice of Peace near where the Party "dwells, and the Juſtice ſhall find Cauſe of Suſpition, then he may "tender and proceed as above. But all this I conceive with clearneſs, "to be meant and intended *Popiſh* Recuſants. But admitting it other- "wiſe, I conceive as this Fact is now put, the Proceedings are not war- "rantable by the above-ſaid Laws, nor any other; for here is no "ſuch Preſentment, Conviction or Indictment, as the Law re- "quires, to warrant either the firſt or ſecond tender of the Oath, "and therefore I conceive the Parties grieved may be relieved, &c. Thus far truly tranſcribed out of Councillor *Smith's* Advice, under his own Hand.

The Premiſſes conſidered, we really think it had been your Beſt, your Cleareſt and Wiſeſt way to have manifeſted your Diſſent (as we gave caution at firſt) from *Francis Bacons's* precipitant irregular dealing with us about the Oath, and his illegal Commitment from Seſſions, which is entred for protect of Authority, with the Title *pro Curiam*; and therefore our ſtrict Confinement thereby as your Act, howbeit 'tis not ſubſcribed by any of you: Wherefore we yet in Love and Good Will to you, both for your own inward Peace, and outward Reputations, as well as our own Rights, requeſt our Liberty, we being wronged, hurt and grieved in divers reſpects by the ſaid Proceedings of your late Recorder; whereof we do once more make our Complaint to you for Relief, according as we think our ſelves obliged in Conſcience, and directed alſo by Law; Pray view the Statute of the 4 *Hen.* 7. c. 12. for 'tis a good one, 'tis worth your reading: Judge *Cook* cites it, and inſiſts upon it as a neceſſary Caveat to all Juſtices of Peace: "For that by the "ſaid Statute Proviſion is made for any Subject "that is hurt or grieved in any thing, that remedy may not be de- "layed

See his *Inſtit.* 4 part. fol. 170.

"layed or deferred, being directed to make complaint to the Justice "or Justices, and to desire Remedy; and if he have no Remedy, "to shew his Complaint to the Justices of Assize, if it be nigh the "time of their coming, but if it be too long afore their coming, "then the grieved to come to the King's Highness, or his Chancellor, "and shew his Grief: Whereupon the King shall send for the said "Justice, to know the Cause, why his said Subjects be not eased? "And if he find any of them in default in these Premisses, he shall "do to him so offending to be put out of Commission, &c.

And now as we can in good Conscience say, we are Persons that refuse not to Swear in favour to any Principles of Disloyalty or Rebellion. Thus much in relation to the Declaration of Allegiance contained in the Oath of Obedience, we do comprehensively and sincerely propose and offer, *viz.*

That Fidelity and true Allegiance to the King we do bear, (which in good Conscience we believe is our Duty) in opposition to and utter abhorrence of all those Horrid, Seditious and Treasonable Practices, Principles and Positions, which are abjured and renounced in the said Oath.

This Declaration (in the sight of him who searches all Hearts) we do really assent to and own, and (through his gracious Assistance) hope ever to be found in the practice of that Fidelity and Innocency towards the King (whom God preserve) that become true *Protestant* Subjects and peaceable-minded *Christians*, desiring only to enjoy the Liberty of the Peaceable and Inoffensive Exercise of our tender Consciences towards our Lord Jesus Christ, in his Worship and Service; That he may direct you in Righteousness, and bless and preserve you and yours, is our Prayer also.

Your Friends and Prisoners for Conscience sake towards our Lord Jesus Christ.

G. W. T. B.

Norwich Goal, the 21st of the 4th Moneth, 1680.

To

To the *Recorder* and *Steward* of *Norwich*. The account of the *Prisoners* Case, more comprehensively stated.

Loving Friends;

WE desire you would take no Exception or Offence at our late request for our Liberties: for we design none towards you, or any other of the Magistrates, being unwilling to disobliege any Person that hath shewn Civility to us in any kind, as we acknowledge you have, in admitting us some discourse with you. One reason of our said Request was, because the other Justices lately gave consent to our enlargement: If the Recorder would consent or advise thereto (as the Messenger told us.) We still really apprehending our selves unduly proceeded with, and wrongfully detained, by the late Recorder's means, both in regard of our own Innocency, and of the Injury and Hurt we have divers wayes sustained by this our Confinement for near four Moneths past, to the impairing our Healths, afflicting our Families, and detriment to our Concerns; And not being wholly ignorant in point of Law, how unwarrantable the procedure is against us from first to last, being also confirmed in our weak Apprehensions therein by Persons learned in the Laws; as *Council* hath lately given it under Hand, *That indeed, its an irregular proceeding throughout.* And that the late Commitment by which we are detained is not good, but against Law: And therefore its being given or pleaded as an Order of, Sessions, or as *pro Curiam* cannot rationally argue it to be an indispensible Law; you know better in Law and Logick doubtless. These things considered, we did think our selves in Conscience obliged and concerned, as *English* men, with respect to our Birthrights to request our enlargement of the Justices of this City: Howbeit we charitably hope, That right is intended us, when you are in *Statu quo*, i.e. at next Sessions; which is the most (as we can rationally suppose) can be alledged for our detention in the mean

mean time by the ſaid Order; and according to your Advice, we have been, and intend to be patient till your Quarter-Seſſions; ſeeing that before 'tis not thought Regular to diſcharge us; ſo that then we hope no further occaſion will be ſought to prolong us in Priſon: But that as prudent men you'l better conſider our Right, and your own Reputions. We cannot but remember how little care of due method and regularity *Francis Bacon* had in getting us into Priſon, conſidering how much there ſeems to be now for our Diſcharge.

1ſt, *We were apprehended, put in Priſon, and detained for ſome Hours upon his verbal Order, without any Examination or Mittimus (he ſent the Sheriff to do it.)*

2dly, *Then we were had before him, and Fined on the account of the Meeting.*

3dly, *Then becauſe we did not depoſit the Fines, he committed us to Goal for the ſame Meeting, by a Warrant only in his own, and not in the King's Name.*

4thly, *Then he laid our Fines upon others, upon a falſe and groundleſs pretence of our Poverty: So he awarded two Puniſhments for one ſuppoſed Offence,* i.e. *Impriſonment and Fines, contrary to the Act in that caſe,* 22 Car. 2. *which intends not Impriſonment.* [*Then obſerve his contradiction in his Warrant.*]

5thly, *The Warrant of our Commitment till the Quarter-Seſſions granted us Bailable.*

6thly, *But ſeveral dayes after he interpoſed with another Warrant, which he ſent to the Goaler, to detain us without Bail or Mainprize till Seſſions, when he had no new matter againſt us.*

7thly, *By his firſt Warrant we were referred to the Quarter-Seſſions, to Anſwer to the Premiſſes contained therein, and to be delivered by due order of Law.*

8thly, *By his ſecond Warrant he put other Premiſſes upon us, to anſwer to at Seſſions about his alone requiring the Oath*

of

of Allegiance of us, which he could not warrant by the Law.

9thly, *At Sessions he would not suffer our Mittimus to be read, till over-powered by the rest of the Justices.*

10thly, *He appeared a Party and open Adversay against us, telling us, there is a Law to Hang such Fellows,* &c.

11thly *He would not suffer our Certificates to be read in Court, as we earnestly requested, being from certain Officers of Note, and other Credible Persons of our Neighbourhood, to remove the unjust Aspersion and Suspition of our being* Jesuits *or* Papists *prejudicially insinuated against us.* *

* By the Informers and himself.

12thly, *He would not suffer the Law to be read in Court, as we requested; upon which he then required the Oath* de Novo.

We must confess, That as to the late Commitment, we have not understood that you have undertaken to justifie it; We are perswaded you are more ingenious and wiser men: Only for the tender of the Oath *de Novo* in Sessions by *Francis Bacon*, the words [*Or any other Person whatsoever*, 3 Jac. 4.] were alledged; although we cannot reasonably understand, that any other Person whatsoever in Court should be more severely dealt withal then the *Popish* Recusant under prosecution, so as to be run to a Præmunire for once refusal upon a surprizal in Court; when as the method prescribed for the *Popish* Recusant, is a first Tender out of Court, and a Commitment for refusal; and a second in Court, and refusal again, before Præmunire; see what *Council* further saith in the case, *viz.* touching the Sessions Justices tendring the Oath—as it follows that of a first tendring, I did mean and did intend a second tendring; and that must be to a Person under such Circumstances, as in my latter Paper, and in this Letter, &c. [according to that of 7 *Jac.* 4.] I know the Words [*or any other Person*] in 3 *Jac.* 4. have in these late times been Construed generally; but certainly it is not within the meaning of that Law, which is truly and only extensive to *Popish* Recusants. About the Offenders incurring a Præmunire; that must be

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a tender of the Oath at the Seſſions, according to that Law, which muſt be a ſecond Tender, as above, *i. e.* after a firſt tender of the Oath out of Court, upon which the party refuſing is committed to the common Goal, (according to his other Paper) on the 3 *Jac.* 4. and 7 *Jac.* 6. And *M. Dalton* plainly expreſſeth the ſame ſenſe of the Law in the Caſe under the Title *Recuſants*. *Dalt. Inſt. pac.* fol. 94, 95.

But *Friends*, Pray take it not amiſs, if we do a little further reaſon in our own caſe, we being the Sufferers and Looſers: If an order of Seſſion, (be it right or wrong) cannot be reverſed or diſpenſed withal but in Seſſions; Then we may conclude we have ſuffered wrong, in not being admitted a hearing the laſt day of the Seſſions (as was before granted, if not promiſed, and as we earneſtly deſired, and our Friends moved for it in Court) to have made our exception, againſt the late Recorder's irregular Proceedings, and his ſaid Order, whereby we are detained, we having matter againſt both: So that the ſame Seſſions (upon a further diſcovery) had Power as well to have reverſed the Order, or diſcharged us, as an Error in proceſs may the ſame Term be reformed in the ſame Court.

And further, If a Perſon committed to Goal by the Juſtices, with theſe Words in the Mittimus, *Scil.* [*without Bail or Mainprize*] Where the Priſoner is bailable by Law, may be let out upon Bail by other Juſtices, which we ſuppoſe is not to be denyed, *Dalt.* fol. 280. Then by the ſame reaſon Perſons illegally committed at Quarter-Seſſion may be diſcharged before next Seſſions: For ſuch order is no otherwiſe in force, then 'tis according to Law, and not becauſe the Juſtices made it. And none ought to be wrongfully detained or delayed in Priſon, any more then wrongfully or falſly Impriſoned. Alſo, for two or three Juſtices within their Power and Commiſſion, to reverſe a wrong Commitment, or Erroneous Proceſs (eſpecially where they might have the conſent of the reſt, as you might in our caſe) is but to make void that which in it ſelf is void in Law, and to be holden for *None*. To be ſure *Magna Charta*, the Petition of right, and the common Law or Reaſon of the Land, with many ancient and good Laws, (wherein the Liberty and Property of *Engliſh* men are concerned) ſtrictly prohibiting illegal Impriſonment, denying or delaying Ju-

ſtice, &c. Theſe will out Ballance the circumſtance of any Order or Warrant in it ſelf unwarrantable.

The moſt that can be charged againſt us, as to matter of Fact, (ſince we were *Recti incuria*, by being diſcharged from the matters contained in our Mittimus and Warrant) is our not Swearing Allegiance. We were no Offenders, till a Trap was laid to make us ſuch. by *Francis Bacon*, in his Abruptly ſurprizing us with that Oath, to run us to a Præmunire (as he had threatned us aforehand) whereas the Law was never intended to enſnare and entrap Men. And God knows our notSwearing, is not for any the leaſt favour to thoſe ſeditious and treaſonable Practices, Principles and Poſitions abjured and renounced by that Oath, for they are an Abhorrence to us. For if we were ſo Unnatural and Perfidious, as to reſerve any ſuch wicked Principles, we might as eaſily equivocally ſwallow that or any other Oath, for our own Intereſts: But let ſuch Colluſion and Fallacy be forever far from us: 'Tis only for fear of offending our Lord and Maſter Chriſt Jeſus, as in all other caſes. For we your Priſoners never took an Oath in our Lives; we dare not Swear in any caſe, becauſe of Chriſt's and his Apoſtles univerſal Prohibition (in that caſe) as we underſtand it; and many of the Primitive *Chriſtians* and *Martyrs*, even Proteſtant *Martyrs* were of the ſame mind. We freely and publickly aſſented to the Declaration and Promiſe of Allegiance contained in the Oath, and hope ever to be found in the Practice thereof; only we are under a Conſcientious reſtraint not to Swear it. We are no *Papiſts*, nor in the leaſt Popiſhly affected, but wholly averſe to *Popery*, as is well known to many: What's then wanting on our parts in this caſe? Is it not only in that we Swear not to that which we profeſs and practice? Pray then have ſo much Charity, Humanity and good Nature towards us, as not to think ſo hardly of us for our Conſcientious perſwaſion, as if we juſtly demerited any ſuch ſevere Penalty, as the Judgment of a Præmunire, to be put off the Kings protection, &c. next to the puniſhment of Traytors, when we bear no ill will to the King; we have nothing but Love and good Will to the King and his People. Surely that Severity cannot in Reaſon or Equity be adjudged *ſecundum Qualitatem & quantitatem delicti* ſuppoſed in our caſe, if due meaſures be taken, according to Equity and the Law of God in the Conſcience; which as the Learned

ned conclude, admits not in all caſes of taking all that the Words of the Law give, for that were ſometimes to do againſt the Law. *To follow the Words of the Law* (ſaith *Doctor* and *Student*) *were in ſome caſes both againſt Juſtice and the Common-Wealth.* Wherefore in ſome caſes it is neceſſary to leave the Words of the Law, and to follow that which Reaſon and Juſtice requires (as it is aſſerted, *Doct.* and *Stud.* pag. 27.) Every man ought to have a due recourſe and regard unto this inward Law of Reaſon and Equity in his Actions; for which all are accountable to him, whoſe Eyes are upon all the wayes of the Sons of Men.

If we be queſtioned, why we did not procure a Writ of *Habeas Corpus* before, or at firſt? We Anſwer, We were not willing, nor adviſed to do that, becauſe we did not deſpair to have Juſtice done us among you here, (nor do we yet) which we really reckon more Honourable for this City, than to delay us under a wrongful Impriſonment.

And now as *præcipitatio & moroſa cunctatio*, i. e. Too much raſhneſs, caſting men down Head-long, and Froward delay, are accounted two great Adverſaries to the due Execution of Law and Juſtice; and we really apprehend our ſelves injured by the firſt, (eſpecially through *Francis Bacon*'s precipitant procedure) We deſire that none in Authority in this City may be concerned in the laſt towards us, to the prolonging us under this reſtraint, (ſo far remote from our Families and Concerns) to the injuring of their own Conſciences, as to their inward Peace, and our further Oppreſſion and Grievance.

Moreover, being ſenſible of a divine Hand of Providence in permitting our ſuffering in this place, as alſo that our Religious cauſe ſhould loſe nothing by our Impriſonment, as we told *Francis Bacon* at firſt; we have been the more Armed with Patience and clearneſs of Spirit (in Love and Good Will) towards the Magiſtrates of this City: Alſo, our tenderneſs and reſpect to them has been ſome ſtop to us hitherto, from preſenting our Grievance (as a Formal caſe) to the King || and Council, which we really intended by way of Complaint, if the late Recorder had continued in place, ſeeing him ſo much bent againſt us; and if the Juſtices would have been ſwayed by him, as that we could not

|| *Though we ſuppoſe he has heard by others of it.*

not have found Relief from them, after Application made to them: And then (from ſo little Converſe and Solicitation as I * have been concerned in at Court) I could eaſily preſuppoſe how the Irregular and Arbitrary proceedings of *Francis Bacon* (and the others Omiſſion) apparently repugnant to the Intereſt of both King and People would have been reſented, and what Reflection it would have procured: Which method we find adviſable and warranted for any Subject that is hurt or grieved in any thing, that Remedy may not be delayed; as 'tis very plain in the Statute, 4 *Hen.* 7. cap. 12. which Judge *Cook* inſiſts upon as a neceſſary Caveat to all Juſtices of Peace; See his *Inſtitutes* 4 part, fol. 170. "The Party grieved being directed to make com-"plaint to the Juſtice or Juſtices, and to deſire Remedy; and if "he have no Remedy, to ſhew his Complaint to the Juſtices "of Aſſize, if it be nigh the time of their coming; but if it be "*too long before their coming*, then the Grieved to come to the "King's Highneſs, or his Chancellor, to ſhew his Grief: Where-"upon the King ſhall ſend for the ſaid Juſtice to know the cauſe why "his ſaid Subjects be not eaſed: And if he find any of them in de-"fault in theſe Premiſſes, he ſhall do to him ſo offending, to be put "out of the Commiſſion, *&c.* 'Tis true, we have intelligent Friends at *London*, and that ſome of them underſtanding how hardly and wrongfully we have been dealt withal, have uſed ſome Solicitation on our behalf to ſome Perſons of Quality; though we have not as yet given any direction, for a formal Complaint to the King. (upon our caſe) And what Intereſt hath already been ſought or procured for us, was never intended to interfer with the Law, or Invalidate the due courſe of it, (becauſe they knew we had it not) nor to ſet up Prerogative above, or in oppoſition to Law and Juſtice: Though we muſt needs aſſent, that the King hath a Prerogative in all things that are not *injurious to the Subject*, and Power to diſable ſuch ſubordinate Miniſters, as do injure any of *his Subjects by the undue or Male-Adminiſtration of Law*. The Earl of *Yarmouth* (to whoſe kindneſs we are much obliged) hath been pleaſed to mediate on our behalf by Letters, deſiring that all the Favour the Law will allow us, may be ſhewn us, (as having received ſufficient Teſtimony concerning our Reputation) as being no *Papiſts*, in order to remove that ſuſpition pretend-

* i.e. *G. W.*

ed

ed to the contrary, to render us Obnoxious. And we hope he will be of so much Credit and Repute with you, as neither to expose us to the Severity of the Law, for our Conscientiously fearing to Swear, nor yet to prolong us under restraint upon any such Infamous or Causeless suspition of what we really are not, prejudicially insinuated * by such Questions as the late Recorder put to us. As, First, *Are you not in Orders from* Rome? *or have you not Orders from thence? Will you take the Oath of Allegiance, to distinguish your selves?* &c. Secondly, *Do you not hold it lawful to Lye, or to tell an officious Lye in some Cases?* Thirdly, *It might be, you might make your Certificate your selves in Prison.* With such like perverse Insinuations before and at Sessions, to render us Obnoxious and Odious, and to cover his Erroneous and Arbitrary proceedings. God preserve and direct you and us.

* 1st, *By the Informers.* 2dly *By* Francis Bacon.

Norwich Goal, the 3d of the 5th Moneth, 1680.

This Account is given you in real Love and Good Will, which we can assure you we bear towards you, as we are your Friends, who truly wish you well

G. W. T. B.

Delivered to the Recorder by *M. Defrance*, the 10th of the 5th Moneth; His absence from the City caused the delay of the Letter so long.

For

For proof of matter of Fact in charge, that it may plainly appear the ſaid *Francis Bacon*, when Recorder, awarded two kinds of Puniſhments, viz. *Impriſonment* and *Fines*, for one pretended Offence: Let the following Citation (being a Copy of one of his Warrants for leavying the *Fines*) be compared with his Warrant of Commitment before cited, both which relates to the ſaid Meeting, held the 21ſt day of *March* (ſo called) 1679.

"*City and County of* Norwich.

"FOraſmuch as Thomas Haward *of the Pariſh of St* Peters "Promountergate *in* Norwich *aforeſaid, Worſtead Weaver,* "*doth ſtand lawfully Convicted before me* Francis Bacon *Eſquire,* "*Juſtice of Peace for the City and County aforeſaid, for being preſent* "*with divers other Perſons at a Conventicle, holden upon* Sunday *the* "One & Twentieth day of March *laſt paſt, in the Houſe of* John De-"france, *in the Pariſh of St* Gregory *in* Norwich *aforeſaid, School-*"*Maſter, under colour or pretence of the Exercize of Religion, in* "*other manner than according to the Lyturgy and Practice of the* "*Church of* England, *and againſt the Statute made* Fr. Bacon. "*in the Two and Twentieth Year of our preſent* "*King's Reign, to prevent and ſuppreſs Seditious Conventicles; for* "*which he the ſaid* Thomas Haward, *is fined by me the ſaid* Francis "Bacon, *for his ſecond Offence ten Shillings, according to the ſaid* "*Statute. And whereas* George Whitehead *of* Hounditch *in* Lon-"don, *Grocer, and* Thomas Burr *of* Ware *in* Hartfordſhire, *Alanl-*"*ſter, do alſo ſtand ſeverally Convicted before me the ſaid* Francis "Bacon, *for taking upon themſelves ſeverally to teach in the ſaid* "*Conventicle, whereby they have ſeverally forfeited by the ſaid Act*

"*for*

" *for this their first Offence Twenty Pounds a piece. Now for that I* " *the said* Francis Bacon, *do in my Judgment think the said* George " Whitehead *and* Thomas Burr *unable to pay their respective For-* " *feitures; These are therefore to Authorize you, and in the King's* " *Majesties Name to require you,* forthwith *to go to the dwelling* " *House of the said* Thomas Haward, *and demand the sum of ten* " *Shillings for his said second Offence; and ten Pounds being the* " *Moyety of twenty Pounds of the said* George Whiteheads *For-* " *feiture, and charged upon him, by reason of the said* George " Whiteheads *Poverty: And if the said* Thomas Haward *shall* " *refuse to pay the same, or deny, upon your demand, to open his Doors* " *for the Execution of this Warrant, then to* break *them open and* " *enter into his House, and leavy the said sum of ten Pounds and* " *ten Shillings,* by distress and sale of the Goods and Chattels *of* " *the said* Thomas Haward, *and the Moneys so leavied deliver* " *and pay* unto me, the said Francis Bacon, *to be by me distributed* " *according to the said Statute; and for your so doing, this shall be* " *your Warrant; and therefore in the diligent Execution hereof fail* " *not at your Peril. Given under my Hand and Seal the first day* " *of* April, Anno Dom. 1680.

" *To the Constables of the Ward of* North Coniesford *in* Norwich " *aforesaid, and to either of them, and to his and their Assistant* " *and Assistants.*

Exceptions *against* the late Recorder's requiring the Oath of Allegiance of *George Whitehead* and *Thomas Burr*, Prisoners, both when first committed, and in Court, and his late Commitment from Sessions.

1st, AS to the late Recorder's pretended tender of the Oath of Allegiance to the said Prisoners, before their first Commitment, the Law did not give him Power thereunto; *they not* being under

7 *Jac.* c. 6. *Dalt.* fol. 94, 95 under thoſe precedent Cauſes and Circumſtances preſcribed in the Statute in that caſe, that is as ſtanding Indicted, or Convicted, or complained of by the reſpective Officers of their Neighbourhood (as therein mentioned) nor was he any ſuch Juſtice o Peace near a joyning to the places of the ſaid Priſoners dwellings (as the Law alſo directeth) but on the contrary, the Priſoners Neighbours both, certain Officers and other Credible Perſons have given Certificates and Teſtimony on their behalf, that they have never been accounted nor reputed *Jeſuits* nor *Papiſts*, nor Popiſhly affected.

2*dly*, His firſt requiring the Oath of the ſaid Priſoners being made void, and reverſt by the late Order of Seſſions, diſcharging the Priſoners of the matters contained in their Mittimus and Warrant, is thereby made no tender, being one of thoſe matters contained in the ſaid Warrant, whereof the Priſoners are diſcharged.

3*dly*, His putting the ſaid Oath *De Novo* (that is for a firſt tender) in the Quarter-Seſſions to the ſaid Priſoners appears *Contra formam Statuti*, againſt the form of the Statute, and order of Law preſcribed and limitted, both in the 3 *Jac.* 4. (even in Relation to *Popiſh* Recuſants) and 7 *Jac.* 6. more general, whereby the firſt tender of the ſaid Oath is not directed to be made in one Quarter-Seſſions, and the ſecond in another; but contrariwiſe, the firſt tender *out of Seſſions*, and a Commitment of the Perſons refuſing to Goal, until the next Aſſize or general Quarter-Seſſions, where the ſaid Oath ſhall be *again* required, which [*again*] relates to the *ſecond tender in open Aſſize or Seſſions*, after the firſt *out of Seſſions*; ſee 3 *Jac.* 4. to which agrees the Statute of the 7 *Jac.* 6. in relation to the firſt tender being made *out of Seſſions*, and the ſecond *in Seſſions*, in theſe Words (viz) Where the ſaid Oath ſhall be *again* in the ſaid open Seſſions required, *&c.* *Dalt.* fol. 77. and fol. 209.

Which [*again*] likewiſe follows the Commitment of the party for refuſing, on the *firſt* tender made out of Seſſions as the Law directs.

4*thly*.

4*thly*, Alſo his ordering the ſaid Priſoners to be committed from Seſſions to the common Goal, there to remain till next Quarter-Seſſions (for not accepting his *De Novo* tender in Seſſions) appears Illegal, and contrary to the form of the Statutes before-mentioned, and courſe of proceeding thereby preſcribed and limitted; See the Judgment of Council || in that caſe; alſo concerning the third Warrant (which is that from Seſſions) in theſe Words (*viz.*)

|| i. e. M. *Smith.*

"I conceive the third Warrant is not good in the Commitment; "as 'tis true, that Act ſays, The Offender ſhall incur a Præ-"munire; yet it doth not in the leaſt give them any Power to com-"mit the Perſon, and therefore, and for that its without Bail or "Mainprize, and to a certain time, and not leaving it to the Law: "I conceive it is againſt Law, *&c.* I believe the Law-makers in-"tended only *Romiſh* Recuſants.

5*thly*, The Statute of the 3 *Jac.* 4. Entituled, *An Act for the diſcovering and repreſſing of* Popiſh *Recuſants*. Upon which that of the 7 *Jac.* 6. is grounded, as alſo the penalty of Præmunire mentioned in the 16 of *R.* 2. appears to be made, and only intended againſt *Popiſh* Recuſants, and ſuch Agents as were Enemies to the King, his Crown and Regalty (which the ſaid Priſoners are not.)

1. From the Preamble concerning the Powder-Plot.

2. From the Nature of the Oath, and thoſe Treaſonable Practices and Principles thereby renounced and abjured.

† Entituled, *Præmunire for purchaſing Bulls from* Rome.

3. From the Statute of Præmunire in the 16 R. 2. † and the Penalty thereof being made againſt thoſe Agents, that did procure Sentences of Excommunication and Bulls, Inſtruments, &c. from *Rome* againſt the King, which touched the King, his Crown and Regalty.

16 *R.* 2. c. 5.

Of *Præmunire.*

Judge *Cook* Inſtit. 3 part fol. 126. "The greatneſs of theſe "Puniſhments do ſhew the Greatneſs of the Offence.

"It is to be obſerved that the Statute of 16 R. 2. is ſtrictly "Pen'd againſt Offenders, &c.

Obſerve, The Priſoners have to plead that they are no ſuch Offenders nor juſtly chargeable with any ſuch Offence againſt the King, his Crown or Regalty, as is mentioned in the 16 R. 2. c. 5.

The Exceptions againſt the *De Novo* tender of the Oath, argued.

IT being a Maxim in Law, that the Penalty ought not to exceed the Offence, but to be *ſecundum Qualitatem & Quantitatem delicti*: Therefore to puniſh Innocent Perſons with the penalty of *Præmunire* (for not taking the Oath, only upon a Principle of Conſcience, becauſe they are afraid to Swear in any caſe, and not upon any Principles of Diſloyalty) equally with them whom the Law concludes Diſloyal and Treaſonable in their Principles at leaſt, (if not actually ſuch) and upon no other account can reaſonably be ſuppoſed to refuſe the ſaid Oath of Allegiance: This appears very unjuſt, and neither *ſecundum qualitatem*, nor *ſecundum quantitatem delicti*, ſuppoſed.

[*The Caſe further argued and illuſtrated.*]

'Tis evident, that the Penalty of Præmunire was intended, by the Law, for Perſons guilty, either of Treaſonable and Seditious Practices or Principles againſt the King and Government, tending to the Subverſion thereof, as appears by the intent of the Law: 'Tis preſum'd, they are at leaſt ſuch Inhærent Traytors by diſloyal and perfidious Principles, as that they are prepared and ready to be actually ſuch, as appears by the Preamble of the 3 *Jac.* 4.

1*ſt*, By the Statute of 16 *R.* 2. cap. 5. *Præmunire* for procuring Bulls, ſentences of Excommunication, &c. from *Rome* againſt the King, his Crown and Regalty.

2*dly*, By the Statute of 5 *Eliz.* cap. 1. Præmunire for holding with, extolling, ſetting forth, maintaining or defending the Authority, Juriſdiction or Power of the Biſhop or See of *Rome*, by Writing, Cyphering, Printing, Preaching, Deed or Act, Adviſedly and Wittingly, &c.

3*dly*,

3*dly*, By the Statute of 13 *Car.* 2. cap. 1. Entituled, *For his Majesties Person and Government against Treasonable and Seditious Practices.* Wherein *Præmunire* is for Maliciously and Advisedly, by Writing, Printing, Preaching, or other Speaking, &c. declare or affirm, that the Parliament begun at *Westminster*, *November* 3. *Anno* 1640. is not yet dissolved, or endeavouring a change of Government, &c. [All which are deemed by Law matters of Fact, Seditious and Treasonable, to which the Penalty of *Præmunire* is sutably prepared.]

4*thly*, By the Title and Preamble of the Statute of the 3d of King *James*, chap. 4. [being an Act for the discovering and repressing of *Popish* Recusants.] Its evident that,

1*st*, *Præmunire* was intended by the Law-makers, for such Persons as were *Popish* Recusants, and infected by the Wicked and Deviliſh Counsel of *Jesuits*, *Seminaries*, &c.

2*dly*, And so far perverted in the point of their Loyalties and due Allegiance, as that they were ready to entertain and execute any Treasonable Practices, instancing that Barbarous and Horrible attempt of the Gun-Powder Plot.

3*dly*, And for divers Persons *Popishly* affected, who to cover and hide their false Hearts, and to attend the opportunity to execute their Mischievous Designs, repair sometimes to Church to escape the Penalty of the Laws, &c.

Which parts of the Preamble duly considered, two things are Naturally deducible to render the Penalty of *Præmunire* sutable to the Offence (as all Penalties of Laws ought to be.)

1*st*, That the Law looks upon them to be Inherently Traytors, or Traytors in Prineiple, and thereby prepared for Treasonable Practices, who justly demerit that Penalty.

2*dly*, That the Law-makers could intend or suppose the Penalty justly due to no other Persons, than such as would refuse the Oath of Obedienee, with respect to such Principles of Disloyalty tending to Rebellion and Treason, as were secretly reserved in their false Hearts, according to the Preamble of the said Act, 3 *Jac.* cap. 4.

That these Words in the 3d of K. *James*, cap. 4. viz. [*Or any*

 other

other Perſon whatſoever, &c. ſhall refuſe to take the ſaid Oath, being tendred unto him or her by the Juſtices of Aſſize, &c. ſhall incur the danger and penalty of *Præmunire*] cannot rationally be ſo largely conſtrued and urged, as for their making a *firſt* tender thereof in the Court of Seſſions to any Perſon whatſoever, ſtanding accidentally in Court without any precedent and juſt cauſe of notorious Evidence againſt them, or Conviction of being *Popiſh* Recuſants, &c. for theſe Reaſons.

1*ſt*, Becauſe ſome Perſons in Court, who are real *Proteſtants*, may Conſcientiouſly ſcruple to Swear, or take any Oath upon the ſame Principle of Chriſt's Doctrine, *Matth.* 5. and *James* 5. upon which many Primitive *Chriſtians* and *Martyrs* (even *Proteſtant* Martyrs) refuſed to take an Oath in any caſe; and not from any Principles of Diſloyalty and Rebellion, which the Oath of Allegiance was provided againſt.

2*dly*, Becauſe the Words as conſtrued, vary from the Order and Courſe of proceeding, preſcribed and allowed even unto *Popiſh* Recuſants, *i. e.* for a firſt tender to be made out of Court, and a ſecond in Court, before a Præmunire for refuſal; Therefore it muſt intend *Any other Perſon whatſoever being a* Popiſh *Recuſant convict*. It would be very unequal and unreaſonable to Præmunire a *Proteſtant* for once Refuſal in Court, upon a ſurpriſal by a ſuddain tender, and allow a *Popiſh* Recuſant ſo much order of proceeding and deliberation as a *firſt Tender* out of Seſſions, and a *ſecond* in Seſſions (and a refuſal upon each) before a Præmunire; howbeit Women covert are exempted from Præmunire.

☞ 3*dly*, The Words [*Or any other Perſon whatſoever*] are left out in the 7 *Jac.* cap. 6. in the recital of the ſame Clauſe, relating to the tender of the Oath in the Aſſize or general Quarter-Seſſions; there muſt needs be ſome cauſe for the leaving out theſe Words in the ſame clauſe: And the latter Act being in the ſame caſe more gentle in this Point, ſuppoſes the former too ſevere, and therefore the Words are left out: For if the firſt had been without Fault, what need of a ſecond?

And its apparent, that in the 7 *Jac.* c. 6. the firſt tender of the Oath (by the Juſtices) is made out of Seſſions, and the ſecond in Seſſions, and a Refuſal upon both, before the Judgment of Præmunire.

Obſer-

Obſervation, The Commiſſion of the Peace ſtood over-burthen'd with divers Statutes; *Some whereof* (ſaith Chief Juſtice *Cook*) *are ſtuft with many vain and unneceſſary Repetitions, and many other Corruptions crept into it by miſtaking of Clerks*, &c. Divers Statutes have been repealed, and divers have expired, &c. He hereupon cautions thus] *Inſtit.* 4 part. fol. 171.

"It is a good Rule therefore for all Judges and Juſtices whatſoever, that have Juriſdiction by any Statute, which at the firſt was Temporary, or for a time, to *conſider well, before they give Judgment*; Whether that Statute hath been continued or made perpetual? whether it be not repealed or *altered* by any latter Statute: *Erudimini, qui judicatis terram.* See 2 part *Inſtit.* The Expoſition upon the Statute of 22 *H.* 8. c. 5. 22 *H.* 8. c. 4.

4*thly*, Query? But how well do they conſider before they give Judgment? If they'l pick up theſe two or three Words out of one Statute, which are after left out in another to warrant a firſt tender of the Oath in Seſſions, to any other Perſon whatſoever (though he be a peaceable *Proteſtant*) and for once refuſal to run him to a *Præmunire*. Here they take no notice of the alteration before they give Judgment; but ſuch *Proteſtants* muſt be more hardly dealt withal than the *Papiſts*.

5*thly*, If any other Perſon whatſoever (beſides the *Popiſh* Recuſant under Proſecution in Court) may be run to the Judgment and Penalty of a *Præmunire* for once refuſing of the Oath, being ſurprized with a firſt tender thereof in Court, then that any other Perſon whatſoever may be dealt more ſeverely with than *Popiſh* Recuſants; for they may have time, deliberation and the courſe of Law for a firſt tender out of Court, and a ſecond in Court before Judgment: But any other Perſon whatſoever, upon a ſurprizal by a firſt tender in Court, and refuſal, doth preſently incur Judgment: This Interpretation and procedure the Law-makers could never intend with the leaſt colour of Equity or Reaſon.

6*thly*, It cannot rationally be granted, that the Law in the Reaſon and Equity of it will bear out the Juſtices, not only in requiring the ſaid Oath at their Diſcretions of any Perſon whatſoever preſent in Court, but alſo to give Judgment of *Præmunire* for once refuſal;

refuſal; that cannot be the mind or intention of the Law-makers; for that were accidentally, and upon a ſurprizal to puniſh any other Perſons more ſuddainly and ſeverely than thoſe *Popiſh* Recuſants who are under Proſecution, according to the order of procedure therein preſcribed and limitted for a firſt tender out of Seſſions, and a ſecond in Seſſions before a *Præmunire*: Let the Maxim or General Rule be minded in the Caſe, viz. *Quod ſi vox aliqua plures habet ſignificationes proprias & uſitatas, illa eligenda eſt quæ menti & intentioni Legiſlatoris eſt Magis accommodata*; i. e. That if any Word have more Significations, proper and uſual; that is, to be choſen which is moſt accommodated to the Mind and Intention of the Law-maker.

7thly, The Diſ-junctive words inſiſted on are, ["Or any other "Perſon whatſoever ſhall refuſe to take the ſaid Oath, being ten- "dred unto him or her by the Juſtices of Aſſize, *&c.*] And not that the ſaid Oath ſhall, or may, be required of any other Perſon ſtanding by in Court: And therefore if the Juſtices ſay, That he is known to be a *Popiſh* Recuſant, being convicted, &c. (for ſuch that Law intends) that's eaſily made appear, if ſuch; or elſe that he is notoriouſly ſuſpected; which are the moſt colourable Allegations for a firſt tender of the Oath in Court, to any other Perſon than him that's under Proſecution: Then it follows, that they cannot legally ſo tender it to any Perſon whatſoever, without exception or limitation, but to a *Popiſh* Recuſant convict, or to one notoriouſly ſuſpected. If this laſt be pretended, then it is to be enquired.

1*ſt*, What he is ſuſpected for? What hainous Offence, Crime or Principle that renders him ſo very Obnoxious in the Eye of this Law, that he muſt be more hardly dealt withal upon a ſurprizal of a firſt tender in Court, than a *Popiſh* Recuſant under Proſecution?

2*dly*, What occaſion is there really againſt him to render him ſuch a notorious ſuſpected Perſon? and who are his Accuſers? 'Tis no ſmall thing in ſuch a caſe to bring a Perſons Reputation and Credit ſo publickly into Queſtion in Court, eſpecially if he be of good Repute among his Neighbours, as no *Papiſt*, nor *Popiſhly* affected, which is the ſaid Priſoners caſe.

Obſervation. Therefore the real Cauſes and Reaſons of ſuſpition in

in this and all Criminal caſes ought to be conſidered, as for Inſtance:

Judge *Cook*; "One or more Juſtice or Juſtices of Peace, cannot "make a Warrant upon a bare Surmize, to break any man's Houſe "to ſearch for a Fellon, or ſtolen Goods, &c. "And it ſhould be full of Inconvenience, that it "ſhould be in the Power of any Juſtice of Peace, "being a Judge of Record, upon a bare ſugge- "ſtion to break the Houſe of any Perſon, of what State, Quality "or Degree ſoever, and at what time ſoever, either in the Day or "Night upon ſuch Surmiſes. Vid. *E. Cook*, Inſtit. 4 part fol. 176, 177.

"For Juſtices of Peace to make Warrants upon Surmiſes, for "breaking the Houſes of any Subjects, to ſearch for Fellons or "ſtolen Goods, is againſt *Magna Charta*: *Nec ſuper "eum ibimus, nec ſuper eum mittemus, niſi per legale Ju- "dicium parium ſuorum, vel per legem terræ.* And againſt "the Statute of 42 *Edward* 3. c. 3. &c. Juſtices of Peace are "Judges of Record, and ought to proceed upon Record, and not "upon Surmiſes: *Sed diſtinguenda ſunt tempora & concordabunt "leges*, i.e. Times are to be diſtinguiſhed, and Laws will agree. *M.C.* cap. 29.

As to a ſufficient cauſe of ſuſpition, ſee likewiſe *Michael Dalton*, &c. * *Communis vox & fama*, that he did the Offence, is ſufficient cauſe of ſuſpition, *viz.* where ſuch a Felony is done, otherwiſe not: But yet for the better conceiving what may breed or give juſt cauſe of Suſpition, mark ſome of Mr. *Bracton's* Rules; *Oritur ſuſpitio ex famâ; fama vero quæ ſuſpicionem inducit, oriri debet apud bonos & graves, (non quidem Malevotes, ſed providas & fide dignas Perſonas) idq; non ſemel ſed ſæpius. Vanæ autem voces Populi non ſunt audiendæ.*

* See alſo *M. Dalton's* Juſtice of Peace, fol. 276. of Excommunication of Fellons.

And therefore where the common Proverb is *Vox Populi eſt vox Dei*, it ſhould be *Vox Populi Dei eſt vox Dei.*

8*thly*, The Words [*or any other Perſon whatſoever*, &c.] in the 3 *Jac.* 4. being left out of the ſame Clauſe in 7 *Jac.* c. 6. and inconſiſtent with the courſe of procedure therein (for a firſt tender of the

the Oath out of Court, and a ſecond tender in Court, even to *Popiſh* Recuſants) are therefore not to be inſiſted upon contrary to the latter Statute: As alſo that paſſage in the 3 *Jac.* 4. impowering the Biſhop of the Dioceſs, or two Juſtices, to examine Perſons upon Oath about *Recuſancy*, is alſo left out of the 7 *Jac.* 6. Where there's any inconſiſtency between two Acts in any clauſe in the ſame caſe, (eſpecially where the firſt is more ſevere than the ſecond) 'tis not reaſonable the firſt ſhould be inſiſted on, in oppoſition to the latter, conſidering that Axiome or Principle, i. e. *Benigna & favorabilis Interpretatio ſemper præferenda eſt præſertim ſi materia legis ſit pœnalis & odioſa*; i. e. A gentle and favourable Interpretation ought alwayes to be preferred, eſpecially if the matter of the Law be penal or grievous.

To conclude on ſome Queſtions and Conſiderations inſtead of an Argument more abſolute; though the Statute before-mentioned, *i. e.* 3 *Jac.* c. 4. and 7 *Jac.* c. 6. be not actually repealed, yet the Queſtion is, Whether they do give the Juſtices power to require the ſaid Oath univerſally of the Subjects of the preſent King, and to proſecute them to a Præmunire thereupon for not taking it?

1*ſt*, Conſider that the form of the ſaid Oath is limitted and preſcribed by the ſaid Statutes, to be taken reſpectively in King *James* his Name, and by *his* Subjects, for the Tryal how they ſtand affected in point of their Loyalty and due Obedience, and not (*mutatis mutandis*) in the Name of King *Charles* the ſecond, and by his Subjects in general, or without exception: 'Twas King *James* his Subjects, and not thoſe of King *Charles* the ſecond after his deceaſe, that were by thoſe Laws required to take it, and thereby were bound to him and his Heirs. The Allegiance was to him and his Heirs; but how do theſe impower the adminiſtring of that Oath of King *James* to the Subjects of his Heirs? That theſe Laws ſeem not to warrant; therefore how can the ſaid Oath be legally required (by the ſame Laws) of the Subjects of King *Charles* the ſecond; or any of them run to a Præmunire thereupon, without being re-inforced or renewed by Act of Parliament? And can that be without

mutatis

mutatis mutandis, King *Charles* the second, in the Oath, instead of King *James*? ||

Observation. For as Judge *Cook* saith, "Neither can any Oath, allowed by the Common Law, or by Act of Parliament, be altered but by Act of Parliament, &c. As the Oath of the Kings Privy-Council, the Justices, the Sheriffs, &c. was thought fit to be altered and enlarged; but that was done by Authority of Parliament. For further proof whereof, (saith he) see the Statutes here quoted, and it shall evidently appear, that no old Oath can be altered, or new Oath raised without an Act of Parliament, or any Oath ministred by any that have not allowance by the common Law, or by Act of Parliament; *Vide* 5 *R.* 2. c. 12. 6 *R.* 2. c. 12. 4 *H.* 4. c. 18. 2 *H.* 5. c. 7. 8 *E.* 4. cap. 2. 1 *R.* 3. c. 6, and 15. 19 *H.* 7. c. 14. 14 *H.* 8. c. 2. 23 *H.* 8. c. 5. 3 *H.* 8. c. 5. 23 *H.* 8. c. 46. 2 *E.* 6. c. 13. 27 *Eliz.* c. 12. 3 *Jac.* 4. *Mag. Char.* c. 6. *Stanf.* pr. 17. *F. N. B.* 264. *W.* 1. 3 *E.* 3. c. 40. 18 *E.* 3. (*Cook* Instit. 3 part fol. 165.)

"To conclude this point, it was resolved in Parliament holden *Anno* 43 *Eliz.* that the Commissions concerning Polices of Assurances could not examine upon Oath, because they had no Warrant either by the common Law or by Act of Parliament; and therefore it was Enacted at that Parliament, That it shou'd be lawful for the said Commissioners to examin Witnesses upon Oath, &c. Oaths that have no Warrant by Law, are rather *Nova tormenta quam Sacramenta.* And it is an high Contempt to minister an Oath without Warrant of Law to be punished by Fine and Imprisonment.

|| But it may be hoped, that after these many Years experience, more safe Expedients may be found out for securing the King and Government, than this or other Oaths; for those that are Perfidious can easily break over such Hedges: And those that are known to be of peaceable Conversations need them not; nor is it for the Honor of Princes to be rendred jealous or suspitious of their peaceable Subjects, by such tyes and shakles which produce not a true natural Allegiance. For even the present King in his Declaration, *Dec.* 26, 1662. hath declared *His Royal dignity and greatness much more happily & securely founded on his Clemency and his Subjects Loves; than in their Fears & his Power.* Further adding these Words, *The sole Strength and Security we shall ever confide in, shall be the Hearts and Affections of our Subjects indeared and confirmed to us*, &c.

Obſerve another Inſtance.

2*dly*, In the 12th Year of the preſent King, it is enacted by the Parliament, that no Perſons ſhould be imployed in any Office relating to the Exciſe, untill they ſhall take the Oath of Allegiance and Supremacy before two, or more, Juſtices of Peace, together with the Oath therein inſerted, *mutatis mutandis*. And likewiſe it is Enacted 14 *Car.* 2. c. 3. That no Perſon being under the degree of a Peer in this Realm, ſhall be capable of acting as Lievtenant, Deputy-Lievtenant, Officer, *&c.* unleſs he or they ſhall firſt take the Oaths of Allegiance and Supremacy, *&c.* Conſider hence, whether the making theſe new Laws in *Car.* 2. does not argue the old Laws cited inſufficient in the ſame caſe of requiring the ſaid Oath now?

12 *Car.* 2. c. 23, 24.

By an Act in the thirtieth Year of the preſent King, Entituled, *An Act for the more effectual preſerving the King's Perſon and Government*; It is Enacted, *That no Perſon ſhould Vote or ſit in the Houſe of Peers, or Houſe of Commons, untill he firſt take the ſeveral Oaths of Allegiance and Supremacy.*

30 *Car.* 2.

And obſerve, that the refuſal by theſe Acts does not incur a Præmunire, but only the forfeiture of their Places or Offices.

And what neceſſity could there be of theſe Acts in King *Charles* the ſecond, if theſe in King *James* were ſufficient or not expired, eſpecially as to that ſevere Penalty of Pæmunire, meerly for refuſing of that Oath, as 'tis required *in terminis*, by thoſe Laws of King *James*: For in the 7 *Jac.* cap. 6. The Members of Parliament are required to take the ſaid Oath, as it was to King *James* and in his Name—If that were ſtill in force and ſufficient, what need were there of any new Laws, as before, to require it of Subjects under the ſame Circumſtances now, as then? To conclude, the Penalty of Præmunire is ſo ſevere, that 'tis more ſuitable for Rebels, or Perſons breaking their Allegiance to the King, than for Perſons only refuſing to Swear it meerly for Conſcience ſake, whilſt they faithfully perform their Allegiance, and intend no other but to demean themſelves as peaceable minded *Chriſtians* and true *Proteſtant* Subjects.

A

A more general Plea in the Priſoners caſe and behalf, relating both to Conſcience, Reaſon and Equity; Firſt, *In reference to the Grounds and Reaſons of the Oath of Allegiance*; Secondly, *In reference to the Reaſon of the Penalty of a Præmunire*, according as both are clearly ſpecified in the Titles, Preamble and Purport of the Statutes (& in the *nature* of the *Oath* it ſelf) in that caſe made and provided, *i. e.* 3 *Jac. c.* 4. and 7 *Jac. c.* 6. and 16 *R.* 2. *c.* 5.

Anno tertio Jacobi Regis, cap. 4. *The Title*; "*An Act for diſcovering and repreſſing of* Popiſh Recuſants.

"FOr as much as it is found by daily experience, that many his "Majeſties Subjects, that adhere in their Hearts to the Popiſh "Religion, by Infection drawn from thence, and by the Wicked and "Deviliſh Counſels of Jeſuits, Seminaries, *&c.* are ſo far *perverted* "in the point of their Loyalties and due Allegiance unto the King's "Majeſty, and the Crown of *England*, *as they are ready* to entertain and execute any *Treaſonable Conſpiracies and Practices*, as "evidently appears by that more than Barbarous and Horrible Attempt to have *blown up with Gun-powder the King*, *Queen*, *Prince*, "*Lords and Commons in the Houſe of Parliament aſſembled*, tending "to the utter Subvertion of the whole State, lately undertaken by "the Inſtigation of Jeſuits and Seminaries, and in advancement of "their Religion, by their Schollars taught and inſtructed by "them to that purpoſe; and divers Perſons Popiſhly affected, the "better to cover and hide their falſe Hearts, and with the more "ſafety to attend the Opportunity, to execute their miſchievous "Deſigns, repair ſometimes to Church, to eſcape the Penalties of "the Laws in that behalf provided.

From all which observe:

First, Who are intended, appears by the Title, *i. e. Popish Recusants.*

Secondly, That by the Preamable here's more than a bare suspicion of many the Kings Subjects, being by the Deviliſh Counſel of Jeſuits thus far perverted in thoſe days, that it was found by daily Experience.

Thirdly, That the effect and influence that ſuch Perverſion had on them was, That they were ready to execute any Treaſonable Conſpiracies and Practices.

Fourthly, The Diſcovery and Experience of ſuch Treaſonable Conſpiracy, proceeding from ſuch Perverſion, *ſcil. That Horrible Attempt to have blown up with Gun-Powder the King, Queen, Prince, Lords and Commons in the Houſe of Parliament Aſſembled.*

By all which 'tis apparent, that this was a manifeſt and moſt grevious occaſion, as 'tis ſpecified, and that of a very high nature in it ſelf, moſt Barbarous, Criminal and Treaſonable, which being chargeable upon the Counſel of the Jeſuits and Seminaries, did ſo far render their Followers ſuſpicious, that Proviſion by this Act and Oath of Obedienee was made and intended for their Diſcovery and Suppreſſion.

Now let Honeſty, Truth, Conſcience and common Reaſon judge in the Caſe, what Equity and Juſtice can there be to purſue the peaceable and innocent People called *Quakers*, upon this or any other Act grounded thereon, and to run them to a Præmunire, to the utter forfeiture and loſs of their Eſtates and Liberties, or to make the ſaid Oath a meer Snare to them, for their ſcrupling to take it, purely upon a Conſcientious account, and not upon any ſuch wicked Principles of Diſloyalty, as are either Treaſonable or tending to the Subvertion of the Government or State of the Kingdom? But being clear and innocent in the ſight of God and Men, from all ſuch wicked Principles, Attempts and Practices, and never chargeable in the leaſt therewith ſince we were a People, what great Injuſtice, both in the ſight of God, Angels and Men, is it, for any that are appointed Miniſters of Juſtice and Right, to make the ſaid Oath a meer Trap and a Snare, to run us out of our Liberties, Properties and Eſtates on this occaſion? If King *James* was accounted a mer-

cifull

cifull Prince, not willing the innocent ſhould ſhare of the Severity due to the guilty, in ſignifying that his intent in publiſhing this Oath was to make a ſeparation between Catholicks of a peaceable Diſpoſition, and in all other things good ſubjects (as hath been reported) and ſuch Catholicks as maintained the Rebellious Principles of the Powder Trators (according as he himſelf ſignified) How much more ought there to be a diſtinction made between the peaceable *Proteſtants*, and ſuch ſeditious and evil Principled Papiſts, for whom the Oath and Penalty of Præmunire was firſt intended, ſo as not to run them upon ſuch *Proteſtants*, who are both of a peaceable Diſpoſition and Converſation? Their diſſenting from the Perſecutors, in point of Worſhip being purely conſcientious and tender towards the Lord Jeſus Chriſt, and with reſpect to a real Reformation from Popery, both as to the Root, Branches and Reliques thereof, which is clearly our caſe. If King *James* was not willing that peaceable Papiſts ſhould be run to a Præmunire, Why ſhould peaceable *Proteſtants* be more ſeverely dealt withal, or run to a Præmunire for their Conſcientiouſly ſcrupling only to Swear Allegiance? * And what proportion or equality can there be between our ſuppoſed Offence, and the Penalty? There's no more reaſon to ſuſpect that our refuſing to ſwear allegiance is out of diſaffection to the King, than that our refuſing to ſwear in our own concerns (to preſerve our juſt Rights) is out of diſaffection to our ſelves. The King loſeth nothing by our not Swearing Allegiance to him, whilſt we perform it; but we ſometimes ſuffer loſs and detriment by not ſwearing in our private concerns. Therefore our ſcrupling an Oath and refuſing to Swear Allegiance is purely matter of Conſcience, and not from any Principles of Diſloyalty to the King, no more than it is from any diſreſpect to our ſelves, or our own Intereſts.

* King *James*'s Apology for the Oath of Fidelity, *fol.* 1. *Quod non tam eo fiebat, &c. i. e.* which was done or made, not ſo much that Subjects of better note might be diſtinguiſhed from Rebells, [*a perduellibus*] which deny juſt obedience to the King, but eſpecially that I might diſcern or ſever [*ſecernerem*] them who addicted to the Opinions of Popery, yet have not abjured fidelity from ſuch who carryed awa with the Whimſie or Phanaticiſm [*vertigine*] of the ſame zeal with the Gun-powder Traytors, would not be held within the Limits of natural Obedience, and believed that all Plots and Treaſonable Crimes were excuſed by the only diſparity of Religion.

Interests. 'Tis not unknown, but generally believed, that Jesuits and Popes Agents in these days can equivocally take the said † Oath, and thereby obscure their destructive Designs, and escape the Penalty of the Law, upon the confidence they have in the Popes pardons, for all their equivocal reserves in taking the Oath, going to Church, &c. And why may not all this be as easily dispensed withal by such Agents of *Rome*, to carry on their evil Designs, as their repairing to Church in King *James*'s days (as is signifi'd) to cover their false hearts, and with the more safety to attend the opportunity, to execute their mischievous Designs. And therefore whilst such can escape by Equivocation, and the Innocent suffer for Conscientiously scrupling to Swear (not only in this, but all other cases) that which was at first intended for the discovering and suppressing such Persons as were infected with destructive and treasonable Principles and Practices, is now contrariwise by subtilty and envy, so far perverted as to be made a *Subterfuge*, for persons obnoxtious and treasonable in their Designs (or disguised and wicked Agents) against the Government, as they are counted of the worst sort, and a Snare and gin to catch and destroy the innocent and peaceable Subjects with, both as to their just Liberties, Properties and Livelihoods in this World. Thus the said Oath is made use of against the Interest of both King and People; they that thus use the Oath use it against the Government; and thus it never attained its end.

† The History of the Church of *Great Britain*, by *G. G.* on that year 1605. p. 272. Upon the making this Act the Pope dispatched two Breves into *England*, prohibiting all Catholicks to take this Oath, so destructive to their own Souls and the See of *Rome*, exhorting them to suffer Persecution, and manfully to endure Martyrdom. Notwithstanding all which, this Oath being tendred was generally taken by Catholicks without any scruple, and particularly *Geo. Blackwell*, Arch-Priest of the *English*, being apprehended and cast into Prison, by taking this Oath wrought his own enlargement. This Oath was ministred immediately after the putting forth of a Proclamation which commanded all Seminaries and Jesuits to depart the Land. *Ibid.* King *James* wrote an Apology for the Oath of Allegiance, together with a Premonition to all Monarchs, Kings, Free Princes and States of *Christendom*, effectually confuting the Popes Breves. [This Apology I have seen] So that it was intended against the Papists is known by all *Christendom*. *Suarez*, *Eudæmon*, *Becanus*, *Coffetus*, *Pelcterius* and other Papists wrote against it. R. R.

Thus

Thus Juſtice and true Judgment is turned backward, and the Juſtice intended by the Law perverted, and the real end thereof made void, and that under pretence of Juſtice, where ſubtilty, envy, perſecution and partiality blinds the mind.

Anno Septimo Jacobi, cap. 6. The Preamble.

"Whereas by a Statute made the third year of your Majeſties "reign, Entituled, *An Act for the better diſcovering and repreſſing* "*of* Popiſh Recuſants. The form of an Oath to be miniſtred and "given to certain Perſons in the ſame Act mentioned, is limitted and "preſcribed, tending only to the *Declaration* of ſuch *Duty* as "every true and well-affected Subject, not only by Bond of Alle-"giance, but alſo by the Commandment of Almighty God, ought "to bear to your Majeſty, your Heirs and Succeſſors, which "Oath ſuch as are infected with *Popiſh Superſtition*, do oppugn "with many falſe and unſound Arguments, &c.

Hence obſerve ſtill.

1ſt, That the very firſt and chief intent of the ſaid Statute and Oath (made in the third year of King *James*) on which this in his ſeventh year is grounded, was for the diſcovering and repreſſing *Popiſh Recuſants*, and not for the repreſſing *Proteſtant Subjects*.

2dly, That 'twas ſuch as were infected with Popiſh Superſtition in thoſe dayes, that (as the Law-makers concluded) did oppoſe the ſaid Oath, with many falſe and unſound Arguments: And what was or could be then ſuppoſed to be their reaſon for their ſo oppugning it, is to be conſidered.

It could not be ſimply and only becauſe it was an Oath, for that they infected generally, or for the moſt part, could Swear in other caſes, to ſerve their own turns. What then?

1ſt, No doubt, it was becauſe of the Declaration contained in it, of ſuch Duty as every true and well-affected Subject ought to bear to the King.

2dly, Becauſe of the ſevere renunciation of the Pope, his having Power and Authority over the King, or to diſpoſe of his Dominions, and againſt the *Popes* Sentence of Excommunication, Abſolutions, and that damnable Poſitions of depoſing Princes, Excommunicated by

by the Pope, absolving Subjects of their due obedience to their Princes, &c.

It appears plainly, that they who were infected with such Principles of Disloyalty, did not oppose the said Oath, simply and only because it is an Oath, but because of the Declaration of such Duty and Allegiance to the King, as is therein contained. *

Now our case vastly differs from theirs, for whom the *Oath* was intended; there's no parity between our case and theirs: We conscientiously scruple or fear to take that Oath, as we do all Oaths, *viz.* because 'tis an Oath, not because of the *Declaration* therein contained, of such Duty and Allegiance as every true and well affected Subject ought to bear to the King, nor yet because of the Testimony or Declaration therein against the Pope, his pretended Power, Excommunications, Absolutions, *&c.* damnable Positions, *&c.* therein mentioned, for that Declaration and Testimony therein contained for Fidelity to the King, and against the Pope, *&c.* we can freely sign, as we have delivered a Declaration to that purpose to the late long Parliament, and in some points containing a more full Protestation against *Popery*, in the most Erronious, Idolatrous and Superstitious Doctrines thereof; which Declaration was accepted by a large Committee of Parliament, as sufficient to distinguish us from *Papists*, and entred into the Journal of the House of Commons. And therefore the Substance of the Declaration of Allegiance, contained in the Oath of Allegiance, we cannot oppugn, but own, as 'tis or may be transferred or intended on behalf of the present King, (in opposition to those Treasonable Practices and Principles thereby renounced and abjured) as being perswaded in Conscience, that he was eminently

* If it should be objected, That there were some that thought it not to belong to their Degree or Profession to Swear. If only on that account they refused it, and not in favour to those seditious and treasonable Practices and Principles therein abjured, then as Persons of a more peaceable disposition, they ought to be distinguisht from Rebels, according to King *James*'s mind. Otherwise, if they could take it in dissimulation, then twas an unsufficient Tryal. Those that did not so think, but in other cases could Swear, either took it, as *Blackwell*, *&c.* or declared the unlawfulness of it in respect of Allegiance, *&c.* Therefore 'twas only against such that so declared or opposed the Allegiance it self, that both the Oath and the Penalty were intended. See *The Dialogue, God and the King*, pag. 18. *Latin.*

eminently preſerved, and reſtored by a Hand of divine Providence, to have actual Power and Dominion in this Realm, and all other his Contries, knowing that the moſt High rules over the Kingdoms of men, and that they are at his Diſpoſal.

And we alſo believe, that in good Conſcience we are bound to demean our ſelves honeſtly, and to live as peaceable minded *Chriſtians*, and true *Proteſtant* Subjects under the King and his Government, giving to *Cæſar* the things that are *Cæſar's*, and to *God* the things that are *God's*. And then our ſolemn and ſerious Proteſtation is againſt the Pope as Anti-chriſtian, and againſt thoſe *Popiſh* Principles, Wicked Poſitions and Practices, *viz.*

Of depoſing or murthering Kings and Princes Excommunicated by the Pope.

Of diſpoſing of their Kingdoms, Dominions and Countries.

Of authorizing Forreign Princes to invade and annoy them.

Of abſolving Subjects from their Allegiance and Obedience.

Of licenſing any of them to bear Arms, raiſe Tumults, or offer Violence or Hurt to their Lawful Kings, Princes, Governments or Subjects.

Of Treaſons, Traiterous Conſpiracies and Helliſh Plots againſt King, Government, Parliament or People.

Of that damnable Poſition, that Princes that be excommunicated or deprived by the Pope, may be depoſed by their Subjects, or any other.

All which deſtructive Principles and abominable Practices, together with that Antichriſtian Spirit, from whence they proceed, we do in good Conſcience (and in the ſight and preſence of God, who knows our Hearts) utterly abhor, proteſt and teſtifie againſt them; and therefore do neither refuſe nor ſcruple the ſaid Oath in favour to theſe or any ſuch Principles.

What's now awanting, why we muſt be run to Præmunire, to loſe our Eſtates and Liberties? Is a peaceable Converſation awanting on our parts? No. Is the Duty of Allegiance towards our King awanting? No. Are we infected with Popiſh Treacherous, Treaſonable or Deſtructive Principles againſt our King, or his Government or People? No; God knows the Innocency of our Hearts and Intentions, and men know our peaceably Converſations. What then's the matter, that we muſt be ſo ſeverely dealt withal, to the uttermoſt rigour of the Law, to be deprived of all our outward

Liberties, Properties, Eſtates, Livelihoods, and all our outward Comforts in this World? Are we guilty of any ſuch eſſential Offence or capital Crime (in our not coming under the circumſtance of an Oath) as may juſtly and naturally merit ſuch ſeverity? No ſure. The caſe is brought to a near point, and reſumed to a very narrow compaſs. An innocent, honeſt, quiet and well meaning man, both towards the King, his Government and People; he's truly principled in his Duty; he's real and honeſt in his Heart towards his *Proteſtant Prince*; he's a real *Proteſtant* againſt the Pope and all Popiſh Antichriſtian Poſitions and Deſtructive Practices; he not only performs his Duty of Allegiance *in his peaceable Converſation*, but alſo declares it in the ſight of God and Men, and is willing to ſign and ſubſcribe ſuch Declaration of his Duty of Allegiance, if he may not otherwiſe be believed, only he conſcientiouſly ſcruples to ſay, *I Swear, and to kiſs the Book*, to make his Declaration an Oath; for want only of which circumſtance and ceremony this poor innocent man and ſincere Proteſtant muſt be run to a Præmunire, his Liberty loſt, and the little Eſtate or Subſtance he has muſt be forfeited, and all taken from him; his poor Wife and ſmall Children left deſolate, wholly Impoveriſhed and want Bread; his Wife muſt go Mourning and wringing her Hands, and ſhedding of Tears night and day, for the hard meaſure ſhe has met withal, and her Children dolefully Crying and Mourning for want of Bread! Where's now either Conſcience, Equity, Reaſon, Juſtice or Mercy? Were it not very Inhumane thus to deſtroy innocent and harmleſs *Proteſtants* (and thereby to gratifie the Popiſh Spirit and Party) meerly becauſe ſuch *Proteſtants* are afraid of an Oath? They dare not Swear. And how is the real intent and end of the Law anſwered by ſuch ſevere and inhumane dealing with innocent *Proteſtants*, who never were impeached nor juſtly chargeable either with treaſonable Attempts, Principles or Practices? They cannot be detected either with actual Treaſon, or being infected with any Treaſonable Principles by any of their Teachers or others. And therefore, no ſuch Perſons or People as thoſe Laws of Præmunire were really intended againſt, though ſuch can eſcape them. We can appeal to God, Angels, and all juſt impartial Men, this is our Caſe; We are not the People, which in point of Equity or Juſtice, the Law could ever be intended againſt; We are of no ſuch deſtructive Principles

or

or Practices, as either the nature of the Oath points at and intends, or the Statute of Præmunire, 16 *R.* 2. *c.* 5. was provided againſt, unto which Statute, both that of the 3d of K. *James c.* 4. and 7th of K. *Ja. c.* 6. do refer, for the Penalty of a *Præmunire* upon Perſons refuſing to Swear to the *Declaration* of their Allegiance. Let that of 16 *R.* 2. *c.* 5. be conſidered, as to the nature and intent thereof.

Anno decimo Sexto Ricardi 2. c. 5. The Title; "*Præmunire for purchaſing of Bulls from* Rome: "*The Crown of* England *ſubject to none.*

The concluſive Clauſe of the Offence and the Penalty, *viz.*

"WHereupon our ſaid Lord the King, by the aſſent afore-"ſaid, and at the requeſt of his ſaid Commons, hath "ordained and eſtabliſhed, That if any purchaſe or purſue, or cauſe "to be purchaſed or purſued in the Court of *Rome*, or elſewhere, "any ſuch Tranſlations, Proceſſes and Sentences of Excommuni-"cation, Bulls, Inſtruments, or any other things whatſoever, "which touch the King, againſt him, his Crown and his Regalty, "or his Realm——And they which bring within the Realm, or "them receive, or make thereof notification, or any other Execu-"tion whatſoever within the ſame Realm or without, that they, "their Notaries, Procurators, Maintainers, Abettors, Fautors "and Counſellors ſhall be put out of the King's protection, and "their Lands and Tenements, Goods and Chattels forfeit to our "Lord the King; and that they be attached by their Bodies, if "they may be found, and brought before the King and his Council, "there to anſwer to the cauſes aforeſaid, or that proceſs be made "againſt them by *Præmunire Facias, &c.*

Animadverſion.

Now it being unto this Statute, cited 16 *R.* 2. and the penalty of Præmunire therein mentioned, that thoſe of King *James*

about refusing the Oath, do refer the Justices, as to the Penalty: Hence these two things are observable:

1. The Nature of the Offence or Fact incurring such severe Sentence and Penalty, as that of Præmunire.

2. The Nature of the Penalty it self.

First, The Nature of the Offence or Fact is very criminal; 'tis Treacherous and Treasonable, as that of *purchasing*, *pursuing* or *procuring* in the Court of *Rome*, &c. *Sentences of Excommunication*, *Bulls*, *Instruments*, &c. *which touch the King*, *his Crown and Regality*.

Secondly, The nature of the penalty of *Præmunire* is suitable to the Fact, it bears a proportion, and is adopted thereto, as that the Persons so highly offending, and such perfidious Enemies against the King, his Regality or Government (by purchasing Sentences of Excommunication and Bulls from *Rome* against the King, tending to destroy him, and subvert his Government) should incur the penalty of being put out of the King's protection, their Lands, Tenements, Goods and Chattels forfeit to the King, and their Bodies attached, and they brought before the King and Council to answer, &c. For how should they desire the King's protection, and to enjoy their Priviledges under him, who *purchase* Bulls from *Rome*, in order to destroy him? which is still an Offence of the same nature and kind, that the Oath of Allegiance, and the Acts requiring it (in King *James* his dayes) were intended and provided against.

All which Offences, Crimes, and treacherous Actions against the King, his Government and People, we are so far clear and Innocent of, as that our very Soul abhors them; And who can charge or justly Impeach us therewith, or with any of them? We can Challenge the whole World, yea, the worst of our Adversaries to detect or impeach us, who are the People called *Quakers* of any of these things; As,

1*st*, Who justly can charge us, or any of us with any such Correspondency either with the Pope, Church or Court of *Rome*, as there to purchase or procure any Sentences of Excommunication or Bulls against the King? *&c.*

2*dly*, Or that can charge or impeach us, or any of us with any Treasons, Conspiracies or Plots against the King, his Government, State, Parliament or People? or that can charge or impeach us,

us, or any of us, with any ſuch Helliſh Deſign, Attempt or Conſpiracy, as either that of the Gun-Powder-Plot, or the ſubverſion of the Government, or with ſeeking to introduce *Popery*, to deſtroy the real *Proteſtant* Religion (or any part thereof) profeſſed in this or other Nation? or that can juſtly charge us, or any of us, with any ſuch pernicious deſtructive, *Popiſh* and *Antichriſtian* Principles, Poſitions or Practices, as the Oath of Allegiance was intended and provided againſt? As we are ſure that no man can juſtly Detect or Impeach us in any of theſe, how then can we either in point of Conſcience, Juſtice, common Equity or Reaſon, be run to ſuch extream Penalties and Sufferings, as to be put out of the King's protection, or to forfeit our Eſtates and Liberties, meerly becauſe we (in point of Conſcience) ſcruple or fear to Swear to the Declaration of our Allegiance, whilſt we ſincerely perform the Duty thereof, by our harmleſs and peaceable Converſation among men, (as our Neighbours are Eye Witneſſes) both as *Chriſtians* and true *Proteſtant* Subjects, which truly anſwers the Intent and End of the Law. Our diſſent (in point of Conſcience and Worſhip) being out of no reſpect to *Popery*, but the contrary: For we really believe, we are more clearly Reformed *Proteſtants*, than thoſe are from whom we diſſent: Where's then the proportion or equality between our ſuppoſed Offence (which is but Circumſtantial at moſt) and the Penalty? There's no *parity* at all between them. Let the Law of Truth, Juſtice, Equity and Conſcience in all moderate Magiſtrates and impartial Men judge in this our Caſe; for to that we appeal, and not to the Spirit of Perſecution, Envy, Revenge and Partiality, which (without any due meaſure of things, and without all Compaſſion) ſeeks occaſion againſt us to deſtroy us, which the Righteous God and juſt Judge of Heaven and Earth will plead with and judge. Let due meaſures be taken of Offences and Penalties, which ought to be ſuitable: Penalties ought not to exceed the Offences (but to be *ſecundum qualitatem & quantitatem delicti*) nor thoſe things to be made Offences which really are none. Let Juſtice and Right take place, and equal Law and execution of Right be followed, according to the Fundamental Laws and Rights of *Engliſh* men, and that which all the Kings Juſtices and Miniſters (who under him are appointed for

that

that end) are obliged unto both in the sight of God and men, as being under a severe Obligation to minister justice and right to all his Subjects, Rich and Poor, without partiality.

Norwich Prison, the 23d of the 2d Moneth, 1680.

Here follow some *Exceptions*, which the said *G. W.* and *T. B.* Prisoners, had in readiness in Court against the manner of their Imprisonment by the Sheriff without a Warrant, on the 21st of the Moneth called *March*, 1679.

Arrest explained, *Dalt.* fol. 306.

"AN Arrest being the apprehending and first "restraining of a man's Person, depriving it "of his own Will and Liberty; and may be called "the beginning of Imprisonment. See *Dalton* fol. 306.

Exception 1.

"If any Officer do Arrest a man for the Peace, or the like, be- "fore that he hath a Warrant, and then after doth "procure a Warrant; or a Warrant cometh after "him to Arrest the party for the same cause: yet "the first Arrest was wongful; and the Officer is "subject to an Action of false Imprisonment. See the Statute 43 *Eliz.* c. 6. See also *Dalt.* fol. 307.

Dalt. fol. 304. of Warrants. *Dyer* 244. *F. Bar.* 248. *Lamb.* 93.

Exception 2.

From the Act made to prevent and suppress Seditious Conventicles, 22 *Car.* 2. fol. 10, 11. These Passages are to be observed: *viz.*

"Also

"Alſo the Sheriff, and other Magiſtrates and Miniſters of Juſtice, or any of them jointly or ſeverally, *&c.* are to have Certificate made to them reſpectively, under the Hand Seal of a Juſtice of Peace or chief Magiſtrate, of his particular Information or Knowledge of ſuch unlawful Meeting or Conventicle held, or to be held in their reſpective Counties or Places; and that he with ſuch aſſiſtance as he can get together, is not able to diſſolve the ſame, ſhall and may repair unto the Place, *&c.* and take into their Cuſtody ſuch, and ſo many of the ſaid Perſons, ſo unlawfully aſſembled, as they ſhall think fit, to the intent that they may be proceeded againſt according to this Act. 22 Car. 2. fol. 10, and 11. fol. 11.

"And the reſpective Conſtables, Head-Burroughs, *&c.* are to have Warrant from the Juſtice, Juſtices or chief Magiſtrate reſpectively, *&c.* to take into their Cuſtody Perſons unlawfully aſſembled, as they ſhall think fit, to the intent that they may be proceeded againſt according to this Act.

Whence two things are obſervable.

1. That Perſons ſo met, as aforeſaid, are not to be taken into Cuſtody by Sheriffs or other Officers, without Warrant or Certificate under the Hand and Seal of a Juſtice of Peace, or chief Magiſtrate.

2. That where Perſons are ſo taken into Cuſtody, 'tis to the intent that they may be proceeded againſt according to this Act, which *Intends* not their Commitment to Goal, but to fine them upon Conviction. Therefore the Priſoners, if they were Offenders againſt this ſaid Act; yet their being taken and thruſt into Goal without ſuch Warrant or Certificate under Hand and Seal, &c. and after being committed and detained in Goal for not paying their Fines, is beſides and contrary to the proviſion made in this very Act.

What due Proceſs in Law is.

"A Commitment by lawful Warrant, is accounted in Law due Proceſs or Proceeding in Law, and by the Law of the Land, as well as by Proceſs by force of the Kings Writ. *Cook* 2 part *Inſtitut.* fol. 52. *Due Proceſs explained.*

Exceptions

Exceptions againſt the Warrant of Commitment, dated the 21ſt of March, *Anno Dom.* 1679.

It appears illegal for theſe two Reaſons.

Exception. 1ſt, Becauſe it is made not in the King's Name, but in *Francis Bacon's* own Name.

2*dly*, Becauſe it was made and ſerved on the 21ſt Day of *March*, in the Year aboveſaid, being the *Lord's Day*, commonly called *Sunday*.

Reaſon for *Exception* firſt.

For the firſt *Exception* obſerve:

Firſt, That the Form of Mittimuſſes, or Warrants of Commitment of Perſons to the common Goal, ought to be in his Majeſties Name, or in the Kings Name, or on the behalf of our Lord the King, &c. As *Dalton* ſhews formal Preſidents, * only ſuch Warrants as are for the Commitment of Rogues, and Whores, and idle Perſons, &c. to the Houſe of Correction, are ſometimes made in the Juſtice's own Name only. See *Daltons* Preſidents, as to the form of Warrants of Commitment, fol. 348, 349, 350, 351. printed in the Year 1622.

Dalt. Juſt. pac. fol. 348, 349, 350, 351.

* His *Preſidents* of *Mittimuſſes*.

Reaſon for *Exception* 2d 29 *Car.* 2. 1677.

Secondly, That in the Act for the better Obſervation of the *Lords Day*, commonly called *Sunday*, there is this proviſion made, *Clauſ. ult.* "Pro- "vided alſo, that no Perſon or Perſons, upon the "*Lords Day*, ſhall ſerve or execute, or cauſe to "be ſerved or executed any Writ, Proceſs, Warrant, Order, "Judgment or Decree, (except in caſes of Treaſon, Fellony, or "breach of the Peace) but that the Service of ſuch a Writ, Pro- "ceſs, Warrant, Order, Judgment or Decree, ſhall be void to "all Intents and Purpoſes whatſoever. And the Perſon or Perſons "ſo ſerving or executing, the ſame ſhall be as liable to the Suit of "the party grieved, and to anſwer Damages to him "for ſo doing thereof, as if he or they had done "the ſame, without † any Writ, Proceſs, War- "rant, Order, Judgment or Decree at all.

† Thus the Sheriff did by the Priſoners.

Obſerve,

Observe, The Case of the said Prisoners, in relation to the Meeting aforesaid, (where they were apprehended) was neither a case of Treason, Fellony, nor breach of the Peace, (they being peaceably assembled, and in a peaceable habit and posture, and for no Evil intent whatsoever) Therefore the whole process against them, on the said 21st day of *March*, 1679. being the *Lords Day*, both by Sheriff and Recorder, were against the Law: *First*, In apprehending and Imprisoning them without Mittimus or Examination: And *Secondly*, In the Recorder's making a Warrant of Commitment, and sending them to Goal on the same Day, when neither Treason, Fellony, nor breach of the Peace were proved, or justly chargeable against them.

Observe, These foregoing Exceptions against the said Imprisonment and Warrant of Commitment were not read in Court, nor the following Notes relating to matter of Fact (though both had in readiness) because the said Warrant of Commitment was not insisted on by the Recorder, but let fall, when his Warrant for detention was detected and made invallid in Court.

And here it may not be amiss to add some Notes *out of* Dalton *and others, concerning the Breach of the Peace, and Assemblies; what are unlawful, and what lawful.*

"Peace in effect (saith M. *Fitz*) is the Amity, Confidence and "Quiet that is between men; And he that breaketh this Amity, "breaketh the Peace. *Dalt.* fol. 7.

"Yet Peace (in our Law) most commonly is taken for an abstinence "from *Actual and Injurious force, and offer of Vio-* "*lence*; & so is rather a restraining of hands than an "uniting of Minds: And for the Maintenance of this "Peace chiefly were the *Justices* of *Peace* first made. *Peace in the common acceptation.*

"The breach of this Peace seemeth to be any injurious Force or "Violence moved against the Person of another, "his Goods, Lands or other Possessions, whether "it be by threatning Words, or by furious Ge- "sture, or force of Body, or any other force used, "*in terrorem Populi.* *Breach of the Peace, what.*

Of Riots, Routs, unlawful Assemblies.

"When three Persons, or more, shall come or assemble them-

"ſelves together, to the intent to do any unlawful Act with Force "or Violence againſt the Perſon of another, his
Dalt. ſol. 200. "Poſſeſſions or Goods; as to Kill, Beat, or other-
Br. Riot. 5. "wiſe to hurt, or to Impriſon a man; to pull down
Crom. 68. "a Houſe, Wall, Pale, Hedge or Ditch wrongfully;
P. R. 25. "to cut or take away Corn, Graſs, Wood, or "other Goods wrongfully; or to do any other un-"lawful Act with Force or Violence againſt the
1 *Ma.* 12. "Peace, or to the *manifeſt terror of the People*; If "they only meet to ſuch a *purpoſe* or *intent*, al-"though they ſhall after depart of their own accord, without doing "any thing, that this is an unlawful Aſſembly. Now in Riots, "Routs, or unlawful Aſſemblies, theſe four Circumſtances are to be "conſidered:

"1. The Number of Perſons aſſembled.

"2 The *Intent* or *Purpoſe* of their Meeting.

"3. The *Lawfulneſs* or *Unlawfulneſs* of the *Act*.

"4. The *Manner* or *Circumſtance* of doing it. See the Statute of 1 *Ma.* 12. 1 *Eliz.* 16.

Aſſemblies Lawful.

Dalt. fol. ibid. 201. "But an Aſſembly of an Hundred Perſons, or "more (yea, though they be in Armour) yet if "it be not *in terrorem Populi*, and were aſſembled
Aſſemblies lawful. "without any intent to break the Peace, it is not "prohibited by any of theſe Statutes, *nor unlawful.*

"For the *intent*, it ſeemeth it can be no Riot, &c.
Crom. 62. *P. R.* 25. "except there be an *intent*, *precedent* to do ſome "*unlawful Act*, and with *violence* and *force*.

"Alſo, where there be three, or more gather-
Dalt. fol. 202. "ed together, either to execute the Juſtice of the "Law, or for the exerciſe of Valour, and tryal of "Activity, or for the increaſe of *Amity* or *Neigh-*"*bourly Friendſhip*, and not being met with an *intent* to break or "diſturb the Peace, or to offer Violence or Hurt to the Perſon of "any; *Such Aſſemblies be not prohibited by theſe Statutes, NOR* "*UNLAWFUL.*

Obſerve,

Obſerve, But the Meetings of the People called *Quakers* are for the increaſe of *Amity* and *Neighbourly Friendſhip*, and not with any Intent to break or diſturb the Peace, or to offer Violence or Hurt to the Perſon of any; Therefore the Aſſemblies of the ſaid People called *Quakers* are not *unlawful*, nor againſt the Peace.

Note, *That the foregoing Quotations out of* M. Dalton, *were taken out of an old Impreſſion, from which the newer Impreſſions differ, as to the Folioes, and ſo may not be ſo readily found in the new ones, though they be in them all.*

Here follows a Copy of the Diſcharge of the aforeſaid Priſoners.

Norwich.

" AT the the General Seſſions of the Peace holden for the City of " *Norwich* and County of the ſame, before *Robert Freeman* " Eſquire, Mayor of the City of *Norwich*, *John Norriſs*, Eſquire, " Recorder of the ſaid City, *John Mingey* Eſquire, Steward of the " ſaid City, and other his Majeſties Juſtices of Peace of the " ſaid City, the 12th of *July*, in the two and thirtieth Year of the " Reign of our Soveraign Lord King *Charles* the ſecond, &c. *Annoq;* " *Dom.* 1680.

" Proclamation being there Publickly made, *That if any Perſon* " *would come into the Court, and give any Information or Evidence,* " *or prefer any Bill of Indictment againſt* George Whitehead *and* " Thomas Burr, *Priſoners at the Barr, and they ſhould be heard.* " And becauſe no Perſon came into the Court, to prefer any In- " dictment, or to give in any Information againſt them, the ſaid *George* " *Whitehead* and *Thomas Burr* are *Ordered* to be DISCHARGED, " being commited by Order of the laſt Seſſions, to remain in Pri- " ſon untill this Seſſions.

" *Per Curiam Corie.*

Observe, That a'though we must needs grant, that after the Sense of the Prisoners case and suffering had impression upon the Mayor * and Justices of the said City, the greatest part of them appeared to be inclined and desirous that they should be discharged before Sessions, if they could have understood how it might have been regularly done, their Eye being to the Recorder's advice in the case; but some of them did as good as promise they should be discharged at Sessions: Howbeit, in order to the more certain obtaining thereof, the Christian Care and great Industry of some Friends, both at *London* and *Norwich* on the said Prisoners behalf, is not to be forgotten, and particularly that of our dear Friend *William Mead*, in his industrious Endeavours and hard Journey to *Norwich*, to visit the said Prisoners, and to Solicit for them, and see their Discharge effected; such Labours of Love and Christian Charity God is not unmindful of: And blessed are the true Followers of Christ, that continue in the true Christian Spirit and unfeigned Love one to another unto the end; for herein is a true Sympathizing with, and fellow-feeling of one another in all Afflictions and Sufferings, for the Testimony of Jesus Christ, and of a good Conscience towards God.

* i.e. *H.C.* whose Mayralty was out before the Prisoners were releas'd.

The

The Religious Assemblies of the People called Quakers *Vindicated:*

First, From the Charge of their being *in Disturbance of the publick Peace.*

Secondly, From the Charge of being *Seditious Conventicles*, mentioned in the Act of 22 *Car.* 2.

Thirdly, From the Charge of being *under Colour or Pretence of an Exercise of Religious Worship, in other manner than is allowed by the Liturgy, or Practice of the Church of* England.

I. TO the first *Objection*, we may ask our Adversaries, What matter of Record * they can justly make against us, the said People, of due Conviction? either from any notorious evidence of Fact, or Testimony of credible Persons, or Confession of our own, as the Law provides; of any *formidable Posture* that we meet in, as that of *Vi et armis*, or any menacing Words or Threats made by us, or of any *Contrivance of Insurrection*, which in the Eye of Law and Reason might be deemed or construed to be *in terrorem Populi*, or in disturbance of the publick Peace, or of the nature of a Riot? If such, should not the matter and Circumstances of the Fact be specified upon such Record as the Law enjoyns? But we utterly deny that we ever meet in any such formidable Posture, as is of the nature or tendance of what the Law deems *in terrorem Populi*. We meet peaceably to wait upon, and really to worship and serve the Almighty God, as our bounden Duty, according to his Grace, Light and Understanding, which he hath given unto us by his Spirit.

* 5 *R.* 2. c. 7. 15 *R.* 2. c. 2.

In the second Year of *Henry* the 5th, Chap. 8. "It is provided, "that if any Riot, Assembly or Rout of People, against the Law, "be

H. 5. c. 8. "be made in any part of the Realm, then the Juſtices "of the Peace, three, or two of them at the leaſt, "and the Sheriff, or under-Sheriff of the County, where ſuch Riot, "Aſſembly or Rout ſhall be made hereafter, ſhould come with the "Powers of the ſaid County (if need were) to arreſt them, and them "ſhould arreſt; and the ſame Juſtices, Sheriff, or under-Sheriff, "to have Power to Record, *that which they have found ſo done in "their Preſence againſt the Law*: And that by Record of the ſame "Juſtices, Sheriff or under-Sheriff, ſuch Treſpaſſors or Offenders "ſhould be convicted in manner and form, as is con-
5 R. 2. 7. "tained in the Statute of *Forcibly Entry*, &c.
1 R. 2. 2. And in the ſame Statute it is provided, "That like "Ordinances and Pains ſhould hold place and take "effect in Cities, Burroughs, and other Places and Towns Infran-"chized, which have Juſtices of the Peace within them.

Now let our Adverſaries and Perſecutors Anſwer us; Where could any of them ever juſtly make any ſuch legal and due Conviction upon Record againſt us, for any ſuch Riotous Meeting, or unlawful Aſſembly on our parts, as hath been really in it ſelf of ſuch a Nature and Tendance as aforeſaid, *in Diſturbance* of the *publick Peace*? We poſitively deny that our Aſſemblies are of any ſuch Nature, however miſ-repreſented by our Adverſaries.

II. *Objection*, If it be alledged, *That our Meetings or Aſſemblies are contrary to Law, and therefore in Diſturbance of the publick Peace.*

Query: We Queſtion what Law or Statute they are contrary unto?

Obj. If it be anſwered, *They are contrary to an Act which is both Mandatory and Penal, made in the two and twentieth Year of King* Charles *the ſecond, Entituled*, An Act to prevent and ſuppreſs Seditious Conventicles.

We *Anſwer*; 1*ſt*, That our Aſſemblies are no ſuch, as Seditious Conventicles, *i.e.* for *Sedition, Strife* or *Rebellion* againſt the Government. 2*dly*, 'Tis a meer begging the Queſtion, to term our Aſſemblies *Seditious*; no ſuch thing has ever been proved againſt them

them as *Sedition*, that is * a *ſtirring* up *to Rebellion or Diſcord*, a *Raiſing* a *Faction* or *Mutiny*, as *Phillipps* in his *New World of Words* explains it; But our Aſſemblies are for no ſuch Deſign or End, nor could ever any overt Act of that kind or tendance be proved or juſtly charged againſt us, in relation to our Meetings, or otherwiſe: Therefore they are *no Seditious Conventicles or Aſſemblies*. 3*dly*, Our Aſſemblies are made up of no ſuch Perſons or People, as have committed any ſuch dangerous Practices againſt the Government, as mentioned in the Preamble of the ſaid Act, 22 *Car.* 2. (though rude Informers and Diſturbers have come Riotouſly, and with Violence againſt us into our Meetings) Neither are we any ſuch *ſeditious Sectaries or diſloyal Perſons, who under pretence of tender Conſciences, have or may at their Meetings contrive Inſurrections*; as alſo the Preamble of the ſaid Act is ſpecified: We uſe no pretence of tender Conſcience for any ſuch wicked End or Deſign. The All-ſeeing and Heart-ſearching God knows our Innocence and Clearneſs herein; as alſo the Nation's long Experience can witneſs for us. And if *Titles* and *Preambles* of Laws be the *Keys* of *Laws*, and do evince or ſhew the Nature and reſpective Intentions thereof, then this ſaid Act againſt *Seditious Conventicles* (where *under pretence of tender Conſciences, Inſurrections have been or may be Contrived*) doth not extend to us. We pretend nothing but what we really intend, viz. *The Spiritual Worſhip and real Service of Almighty God*, who ſearches our Hearts, and whom we ſincerely Reverence and Fear.

* Sedition explained.

III. *Obj.* But if it be objected, *That the* matter *of* Fact *incurring the* Fines *and* Penalties *of the ſaid* Act *againſt* Conventicles *is our Meeting under Colour or Pretence of an Exerciſe of Religious Worſhip, in other manner than according to the Liturgy and Practice of the Church of* England, *or in other manner than is allowed thereby.*

Anſw. We anſwer; 1*ſt*, That the words [*Colour or Pretence*] have relation to the Preamble, as, *Who under pretence of tender Conſcience have or may at their Meetings contrive Inſurrections, as late Experience hath ſhewn.* But ſuch pretence or colour of Religious Exerciſe, for any ſuch Contrivance, were Abominable, Deceit and Hypo-

Hypocrifie, and never chargeable upon us, or our Aſſemblies: We can challenge the whole World to detect us herein.

2*dly*, We are not conſcious to our ſelves of any ſuch matter of Fact committed in our Aſſemblies, and on our part which the Liturgy or Practice of the Church of *England* allows not. If we be herein charged, let's know what it is that we have done in our Aſſemblies, which the Liturgy and Practice of the Church of *England* allows not of, ſeeing the Liturgy allows of the holy Scriptures, which we are ſure allow of and enjoyn Chriſtians *Aſſembling together to wait upon and worſhip God in Spirit and Truth*, and of the manner thereof, as to the places, whether in *Houſes*, or *abroad in Fields* or *Mountains*, which is our caſe, both as to the matter and manner of our Aſſemblies.

Obj. If it be ſtill objected, *That our Meetings are under colour and pretence of an Exerciſe of Religious Worſhip, in other manner than according to the Liturgy and Practice of the Church of* England.

Anſw. We anſwer; 1*ſt*, What that exerciſe of Religious worſhip is, that is in other manner than according to the Liturgy, ſhould be explained unto us, and that according to Law, ſeeing this late Act againſt Conventicles does *not* explain *What Manner* 'tis.

† *What other Manner the Liturgy allows not.*

But 2*dly*, we find in a Statute made in the firſt year of Queen *Elizabeth*, Chap. 2. That *that other Manner* is thus explained, *viz.* † "That if any Perſon or Perſons whatſoever ſhall "by open Fact, Deed, or ſhall by open Threatnings compell or cauſe, or otherwiſe procure or maintain any Parſon, Vicar, or other Miniſter in any Cathedrial or Pariſh Church, "Chappel or in any other place, to ſing or ſay any common and open "Prayer, or to miniſter any Sacrament otherwiſe, or in *any other* "*Manner* and *Form*, than is mentioned in the ſaid BOOK, *&c.* This does not at all reach our caſe, we are not found guilty hereof, and therefore are not condemnable by the Law in this caſe; this concerned the Clergy, not us; and we neither threaten, compel, cauſe or any wiſe procure or maintain any Parſon, Vicar, or any elſe, to ſing or ſay any common or open Prayer, or to miniſter any

any Sacrament in any Cathedrial or Pariſh-Church, &c. we are ſo far from, that we compel *No Body* to any Form of Singing or Praying in God's Worſhip, but perſwade men to ſerve and worſhip God as he directs, and for that end deſire all may come to his divine Grace and good Spirit in their Hearts, to guide them in his holy Worſhip, both as to matter and manner of praying and praiſing his Name, that they may ſerve and worſhip him, not in the oldneſs of the Letter, but in the newneſs of the Spirit, for ſuch he is (even in our days) ſeeking to worſhip him, as muſt worſhip him in Spirit and in Truth; and ſuch both pray with the Spirit, and ſing with the Spirit, and with Underſtanding, according to the antient Apoſtolical Teſtimony and Practice of the Primitive Spiritual *Chriſtians*.

Norwich.

An *Account* of the People called *Quakers* ſent to Priſon by *Francis Bacon* when he was Steward, and alſo ſince he was Recorder, and thoſe Mayors of the City of *Norwich* who joyned with him ſince the late Act againſt *Conventicles*, 22 *Car.* 2. came forth.

1670. THe 10th of the Moneth called *July*, 1670. *Thomas Buddery*, *John Ruſt*, *Edward Monk*, *William Waymor* and *Anthony Alexander* were ſent to Priſon (upon pretence of a Riot, for telling People as they paſſed to the Mayors Houſe, there were the Informers, (when people were inquiſitive to know which they were) by a Warrant from the then Mayor and *Francis*

Bacon Steward, ſignifying no crime in the Warrant, but till they could find Sureties for the Behaviour; where they were in Priſon till the Seſſions, and an Indictment brought againſt them for a Riot; but the Grand Jury were found better Juſtices, and would not find the Bill: They were detained Priſoners about five weeks.

1670. *Samuel Duncon* and *Anthony Alexander* in the year 1670. made their Appeal, where inſtead of having Juſtice done them, the ſaid *Francis Bacon* being Judge of the Seſſions, did abſolutely ſurprize them by his Illegal Proceedings, refuſing to give them a Copy of the Records, and made one Witneſs (being alſo a party) ſerve his turn, and the Act ſays there muſt be *Two*; for which they wrote to the Mayor, Steward, and Court of Aldermen, telling them of their *Injuſtice*, and for ſo doing they were committed to Priſon by the ſaid Mayor, till they ſhould find Sureties for their appearance at Seſſions (upon pretence of ſcandalous Expreſſions in their ſaid Letter) who was obſerved to Tremble when he ſigned the Mittimus, and for it they were kept Priſoners about A YEAR.

1676. *Thomas Atkins* was taken out of a Meeting the 17th of the 5th Moneth, 1676. by Conſtables and Informers; and being had before the Mayor, and *Fr. Bacon* Steward, and ſeveral Aldermen in their Council-Chamber, ſome of them being very bitter and cruel, ſaying, he ſhould pay his 20 *l.* and they tendered him the Oath of Allegiance, and he refuſing to Swear, they ſent him to Priſon, where he was detained about fourteen Weeks.

1678. *Thomas Murford* had his doors broke open by a Conſtable, having a Warrant from *Francis Bacon*, Recorder, for 20 *l.* *Thomas* being not at home, who made his Appeal when he came home; but the Recorder being Judge, and having a Jury for his purpoſe, carried the Caſe, and from the Court committed *Thomas* to Priſon, where he was detained twenty Weeks.

1678. *Simon Gogny* was ſent to Priſon the 16th of the 1ſt Moneth, 1678. by *Francis Bacon* Recorder, till he ſhould find

find Sureties for his good Behaviour. Becauſe the ſaid *Simon* ſpoke to him (when he came himſelf to break our Meeting) ſomething on that occaſion, by way of Warning, telling him of *Empſon* and *Dudly*, he was detained eight Weeks and odd dayes.

1679. *Thomas Buddery* was ſent to Priſon by *Francis Bacon*, Recorder, the 30th day of the 1ſt Moneth, 1679. till he ſhould find Sureties for the Peace, ſo expreſſed in his Mittimus. Becauſe he anſwered in defence of Truth, in theſe words, *viz. The Service of God is Perfect Freedom*, he was detained in Priſon ſix weeks odd dayes.

Norwich.

A brief *Account* of what Goods have been taken from ſome of the People called *Quakers* in *Norwich*, ſince the Year 1670. to this 30th day of the 1ſt Moneth, 1680. by Warrants from *Francis Bacon* (when Steward and Recorder) and three of the Mayors of *Norwich*, who aſſiſted him upon the late *Act againſt Conventicles*.

		L.	*S.*	*D.*
1670. Five times in the ſame year. The 15th of the 5th mon. 1676.	TAken from *Samuel Duncon* at ſeveral times, by Warrant from two Mayors, and *Francis Bacon*, both when he was Steward, and ſince he was Recorder, Goods to the value of——	72	15	5
In the Years 1670, 1675, 1676. 1678.	Taken from *Anthony Alexander* by Warrants from the ſame Juſtices, and alſo by the third Mayor, Goods valued at—	72	16	8

In the Years 1676, 1678, 1679.	Taken from *Thomas Murford*, by Warrants from *Francis Bacon*, Recorder, Goods to the value of ——	60	01	0
In the Years 1670, 1679.	Taken from *William Waymor* by Warrants from the then Mayor, and *F. Bacon*, Recorder, Goods to the value of ——	10	09	0
In the Years 1675, 1675, 1675, 1676, 1670.	Taken from *John Fiddeman* to the value of ——	00	08	6
	From *John Sharping*, Junior, ——	00	05	0
	From *John de France* ——	00	10	0
	From *Robert Hutchinson* ——	00	07	2
	From *Thomas Buddery* ——	01	00	0
	Sum Total	218	12	09

Note, *That 'tis not thought fit to expose the Names of the said Mayors of* Norwich *in this place, hoping that they or some of them, at least, have seen better things by this time, than for the future to have any hand in such Horrid Oppressions (by Imprisonment, Fines and Distresses) upon their Poor Industrious Neighbours, for their tender Consciences, in their meeting to serve God, as they are inwardly perswaded. They cannot be ignorant how discouraging and destructive such Imprisoning, Spoiling and Impoverishing their Neighbours, is to the Trade of their City, which in the Manufactures much depend upon the Woolt-Combers and Worsted-Weavers, &c. And when such poor Labouring men are thus spoiled and harrassed, as to their Livelihoods, how hard it is for their poor Families to subsist? How can such Severities consist either with Christianity or Humanity? Let the Prineiple of Justice in all Consciences judge; And may those guilty of such Oppressions Repent before they dye.*

Here

Here follows a Copy of an Addreſs *from our ſuffering Friends in* Norwich, *in the Year* 1679. *directed to the Knights and Burgeſſes for the County of* Norfolk, *and City of* Norwich.

The Suffering Caſe of ſome of the People called *Quakers* in the ſaid City.

THe Goods of ſeveral have been taken away, without being tryed by their Equals, only by Witneſſes in their abſence, which was given againſt them by ſuch as were Parties; and when ſome made an Appeal, and deſired a Copy of the Records which were Sworn in their abſence before their Tryal, they were denyed it, and *Francis Bacon*, who is Recorder of the ſaid City, and ſate for Judge of the Seſſions, would not let the Evidence be *viva voce*, but made the ſaid Records (which he would not grant a Copy of before the Tryal) the only Evidence againſt ſome Appealants, and put them upon diſproving that, and ſo ſurprized them; and for complaining of the Injuſtice of it, two were ſent to Priſon, and they were kept Priſoners about twelve Moneths: And another that made his Appeal *F. Bacon* ſent to Priſon, who asking him, Wherefore he was ſent to Priſon? told him, *He ſhould know afterwards*; and he was kept cloſe Priſoner eighteen Weeks. And *John Crow*, an Attourny upon Warrant from *F. Bacon* aforeſaid, againſt *Samuel Duncon* of *Norwich*, upon the account of a Meeting, got into the ſaid *Samuel*'s Houſe (when he was from Home) and ſhut up his Shop, and he and others kept Poſſeſſion of his Houſe night and day, to the terror of the ſaid *Samuel*'s Wife, who was very big with Child, and took away the ſaid *Samuel*'s Goods; and when one would have taken account of the Goods, the ſaid *John Crow* would not ſuffer it; but they rather acted like Plunderers than Executors of Juſtice

Juſtice. And the ſaid *F. Bacon* hath ſlandered the People called *Quakers*, as being *Papiſts* and *Jeſuits*, exciting the Jury at the Seſſions in *Norwich*, to bring in preſentments againſt them, upon which ſome have been Preſented and Arreſted upon a Seſſions proceſs for 20 *l. per Moneth*, for not going to the Pariſh Church. And the ſaid *F. Bacon* hath very lately proſecuted the ſaid People for their Meeting to worſhip God, and hath ſent two to Priſon that he took at ſuch a Meeting, which were kept Priſoners near eight weeks in a ſtinking Hole, one of which he ſent to Priſon without a Warrant, and its ſaid, threatned to ſeize upon their Houſe, and preſſeth the Conſtables to execute Warrants from him againſt ſome of the ſaid People called *Quakers*, to take away their Goods, and tells them, *They muſt break open their Doors.* And upon the 19th of the 3d Moneth, 1679. came two Conſtables to the Houſe of *William Waymor* with a Warrant from *F. Bacon*, to ſtrain for 10 *l.* 5 *s.* who unbarr'd his Shop Door, and an inward Door being lockt, broke it in pieces, and took Goods to the value of 10 *l.* and better, and praiſed them at three Pound, and ſay, *They muſt come for more upon the ſame Warrant*; which great Spoil, as aforeſaid, being made upon us by Mercinary Witneſſes in our Abſence, and given againſt us, and we thus oppeſſed by ſuch as are Parties. This kind of proceedure (we conceive with ſubmiſſion) is not more excuſable now, than it was in the caſe of *Empſon* and *Dudly* † in King *Henry* the 7th's time who were impeached and condemned for their Oppreſſions and Arbitrary Proceedings, (though they pleaded the proſecution of an Act of Parliament) and to be of as dangerous a tendency to Arbitrarineſs. Thus ſome to gratifie their Prejudice, others their Covetouſneſs (under pretence of proſecuting the late Act againſt ſeditious Sectaries) have very much oppreſſed

† Theſe two Oppreſſors *Empſon* and *Dudly* were impeached before the Court of Parliament for their Arbitrary Proceedings and Horrid Oppreſſions which they committed, upon *Information* for the *King* (having many Informers to aſſiſt them) without lawfull Preſentment, Tryal of lawful Peers or Verdict of 12 honeſt men. They acted under pretence of a Law made in the 11th year of K. *Henry* 7. c. 3. which being contrary to *Magna Charta*, cap. 29. was made void and repealed, 1 *Hen.* 8. c. 6. by the Parliament holden then, and the two Oppreſſors brought to their Tryal, Condemnation and Execution. See *Cooks Inſt.* 2 part, fol. 51. and 4 part, fol. 40, 41.

preſſed the Subjects; and what is charged upon the Proſecutors aforeſaid, can be proved if required. Wherefore we intreat your tender Conſideration of this our ſuffering Condition, and endeavour for our Relief.

Signed by Samuel Duncon *and fifteen more of the Citizens and Inhabitants of* Norwich.

Norwich, *the* 23*d of the* 3*d Moneth*, 1679.

ERRATA.

Ingenious Reader;

BE *pleaſed to Correct theſe Faults which have eſcaped the Preſs, through the Printers Inadvertency, and not to impute them to the Authors.*

Page 3. **Line** 24. for *enterim* read *interim.* p. 7. l. 22. r. *it cannot.* p. 8. l. 29. f. *cauſes* r. *cauſe.* p. 9. l. 4. for 18 read 28. p. 14. l. 35. r. *Mittimuſſes.* p. 15. l. 31. r. *Juſtices.* p. 16. l. 31. f. *Anglia'* r. *Angliæ.* p. 24 l. 17. f. *Court is bound* r. *Court is not bound* p. 29. l. 9, & 10. f. *except* r. *accept.* p. 31. l. 8. f. *Qualitatem delicti* r. *Quantitatem delicti.* p. 40. l. 21. r. *referred.* p. 44. l. 15. f. *there* r. *here.* p. 47. l. 35. f. *this* r. *theſe* p. 51. l. 1. f. *pro* r. *per.* p. 52 l. 24. f. *pretect* r. *pretext*, l. 25. f. *pro* r. *per.* p. 54. l. 25. f. *pro* r. *per.* p. 58. l. 4. f. *incuria* r. *in curia.* p. 65. l. 5. dele *M* in the Margent. p. 71. l. 27. f. *ocitur* r. *oritur.* p. 72. l. 11. f. *edio a* r. *odioſa.* p. 79. l. 27. r. *the infected.* There are other Faults in Letters and Points, which are to be amended or underſtood, as the ſenſe will ſhew in the reading.

THE END